2007-2008

SENATE
JUDICIARY II
COMMITTEE

MINUTES

MEMBERSHIP

Senate Judiciary II Committee
2007-2008 Biennium

Senator Fletcher Hartsell, Chairman
Room 518, LOB
733-7223

Senator Austin Allran, Vice Chair
Room 516, LOB
733-5876

Senator Doug Berger, Vice Chair
Room 622, LOB
715-8363

Senator Ed Jones, Vice Chair
Room 623
733-3032

Senator Tom Apodaca
Room 1127
733-5745

Senator Bob Atwater
Room 522, LOB
715-3036

Senator Stan Bingham
Room 2117, LB
733-5665

Senator Walter Dalton
Room 523, LOB
715-3038

Senator Charlie Dannelly
Room 2010, LB
733-5955

Committee Assistant:

Gerry Johnson

Senator Katie Dorsett
Room 2106
715-3042

Senator Don East
Room 1120
733-5743

Senator Eddie Goodall
Room 1414, LB
733-7659

Senator Jim Jacumin
Room 406, LOB
715-7823

Senator John Kerr
Room 526, LOB
733-5621

Senator Joe Sam Queen
Room 1121, LB
733-3460

Senator John Snow
Room 517, LOB
733-5875

Senator A. B. Swindell
Room 629, LOB
715-3030

Research Staff:

Kory Goldsmith
Ben Popkin
Jennifer McGinnis

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0038	Parmon	SILVER ALERT SYSTEM/ MISSING PERSONS ALERT.	*S	Pres. To Gov. 7/ 31/2007	04-16-07	07-27-07
H0183=	Rapp	BAN CELL PHONE USE BY SCHOOL BUS DRIVERS.	*SR	Ch. SL 2007-261	05-21-07	07-03-07
H0189	Allen	PYROTECHNICS PERMITS BY CITIES	*SR	Ch. SL 2007-38	04-02-07	04-26-07
H0280=	Walend	TRANSYLVANIA TAX COLLECTOR APPOINTIVE.	S	Ref To Com On Judiciary II (Criminal)	04-17-07	
H0316	Daughtry	AMEND CIVIL PROCEDURE RULE 45.	*S	Pres. To Gov. 7/ 31/2007	04-02-07	07-25-07
H0316	Daughtry	AMEND CIVIL PROCEDURE RULE 45.	*S	Pres. To Gov. 7/ 31/2007	07-26-07	07-27-07
H0341	Glazier	PROPORTIONALITY REVIEW.	*S	Ref To Com On Judiciary II (Criminal)	05-29-07	
H0441	Sutton	FELONY/STEAL OR CUT ANOTHER'S TIMBER.	*S	Ref To Com On Judiciary II (Criminal)	04-04-07	
H0445	Dickson	ACCESS TO INFORMATION FOR ADULT ADOPTEES.	*SR	Ch. SL 2007-262	05-16-07	07-10-07
H0535	Wainwright	CRIMINAL BACKGROUND REVIEWS- EMS PERSONNEL.	*S	Pres. To Gov. 8/1/ 2007	04-25-07	07-03-07
H0535	Wainwright	CRIMINAL BACKGROUND REVIEWS- EMS PERSONNEL.	*S	Pres. To Gov. 8/1/ 2007	07-09-07	07-10-07
H0545=	Ross	GENERAL STATUTES COMM. TECHNICAL CORRECTIONS.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
H0550=	Love	MODIFY SCHOOL EMPLOYEE CONFIDENTIALITY LAW.	*SR	Ch. SL 2007-192	05-21-07	06-25-07
H0554	Insko	ASSAULT DISABLED PERSON/INSTITUTIONAL SETTING-AB	*SR	Ch. SL 2007-188	05-23-07	06-26-07
H0563	Sutton	TRAFFIC & PERSONAL SAFETY CHANGES/ PROTESTS.	*S	Pres. To Gov. 7/ 23/2007	05-09-07	07-16-07
H0573	Williams	AUTHORIZE JUDGE/ CONCEALED WEAPON IN COURT.	S	Pres. To Gov. 8/2/ 2007	04-23-07	07-27-07
H0634=	Ross	ADVANCE DIRECTIVES/ HEALTH CARE POA.	*S	Pres. To Gov. 7/ 31/2007	04-16-07	07-27-07
H0730=	Goforth	MEDIATION OF PROPERTY INSURANCE CLAIMS.-AB	SR	Ch. SL 2007-300	04-02-07	07-16-07
H0765=	Ross	TEST. ADDITIONS TO TRUSTS/WILL REFERENCES.	*SR	Ch. SL 2007-184	04-11-07	06-12-07
H0767=	Sutton	ATV USE FOR EMERGENCIES.-AB	*S	Pres. To Gov. 8/1/ 2007	04-30-07	07-23-07
H0775=	Ross	REVISE SIMULTANEOUS DEATH ACT.	SR	Ch. SL 2007-132	04-16-07	06-12-07
H0865	Goodwin	REMOVE BARRIERS TO INTERSTATE ADOPTION.	*SR	Ch. SL 2007-151	04-17-07	06-19-07
H0866	Goodwin	EXPAND REACH OF	*SR	Ch. SL 2007-152	04-17-07	06-19-07

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		COURTS/TERM. PARENTAL RIGHTS.				
H0904	Thomas	DUPLICATE DRIVERS LICENSE REQUIREMENTS.	*S	Re-ref Com On Rules and Operations of the Senate	05-16-07	07-16-07
H0943	Lewis	UPDATING OF JURY LIST.	*S	Pres. To Gov. 8/1/ 2007	04-25-07	07-25-07
H0946	Grady	VANDALISM DAMAGES MORE THAN $5,000/ FELONY.	*S	Ref To Com On Judiciary II (Criminal)	05-15-07	
H0947	Blue	NC FORECLOSURE/ LANDLORD TENANT LAWS.	*S	Pres. To Gov. 8/1/ 2007	05-22-07	07-25-07
H0995	McElraft	INCREASE PENALTY/ STARVATION OF ANIMALS.	*SR	Ch. SL 2007-211	05-21-07	06-26-07
H1003=	Johnson	AGGRAVATING FACTOR/NO PROBATION COMPLIANCE.	*S	Ref To Com On Judiciary II (Criminal)	05-16-07	
H1168	E. Warren	PITT COUNTY PROTEST PETITIONS.	*S	Ref To Com On Judiciary II (Criminal)	05-02-07	
H1243	Bryant	COURTROOM PROCEDURES/ JUVENILE PROCEEDINGS.	*SR	Ch. SL 2007-100	05-21-07	06-11-07
H1277	T. Harrell	DRIVERS LICENSE REVOCATION FOR ABC VIOLATION.	*S	Pres. To Gov. 7/ 23/2007	05-22-07	07-16-07
H1287	Sutton	REPORT DENIAL OF SOME PISTOL PERMITS.	*S	Ref To Com On Judiciary II (Criminal)	05-07-07	
H1291	Womble	NC RACIAL JUSTICE ACT.	S	Ref To Com On Judiciary II (Criminal)	05-29-07	
H1322	Clary	FIRE CHIEFS/EMS DIRECTOR: CRIM. REQUESTS.	*S	Pres. To Gov. 8/1/ 2007	05-07-07	07-03-07
H1347	Holloway	FALSE REPORT/MASS VIOLENCE AT SCHOOL.	*SR	Ch. SL 2007-196	05-09-07	06-26-07
H1359	Wiley	IMMUNITY/VETS REPORTING ANIMAL CRUELTY.	SR	Ch. SL 2007-232	04-26-07	06-28-07
H1366	Glazier	SCHOOL VIOLENCE PREVENTION ACT.	*S	Re-ref Com On Judiciary I	05-29-07	07-31-07
H1372	Folwell	ORGAN AND TISSUE DONATION/THE HEART PREVAILS.	*S	Pres. To Gov. 7/ 27/2007	06-20-07	07-23-07
H1479	Glazier	JUVENILE CONTEMPT/ PROCEDURES AND SANCTIONS.	*SR	Ch. SL 2007-168	05-24-07	06-14-07
H1482	Glazier	AMEND CIVIL NO-CONTACT ORDER LAWS.	SR	Ch. SL 2007-199	05-15-07	06-26-07
H1487	Blue	STATE BAR CHANGES.	*SR	Ch. SL 2007-200	05-08-07	06-25-07
H1500	Glazier	DNA EVIDENCE/PRESERVE & ACCESS BY DEFENDANT.	*S	Pres. To Gov. 7/ 24/2007	05-16-07	07-18-07
H1549	McGee	CLARIFY LAWS GOVERNING EXECUTION ON JUDGMENTS.	S	Re-ref Com On Judiciary II (Criminal)	05-08-07	06-19-07

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H1549	McGee	CLARIFY LAWS GOVERNING EXECUTION ON JUDGMENTS.	S	Re-ref Com On Judiciary II (Criminal)	07-10-07	
H1617	Barnhart	INVESTIGATIONS OF DEADLY FORCE.	SR	Ch. SL 2007-129	05-09-07	06-19-07
H1634	Martin	CUSTODY/VISITATION/ MILITARY ORDERS.	*SR	Ch. SL 2007-175	05-16-07	06-19-07
H1659	Fisher	CRIMINAL HISTORY CHECKS/DPI EMPLOYEES.	*S	Pres. To Gov. 8/1/ 2007	07-11-07	07-23-07
H1707	McLawhorn	DETENTION OFFICERS COURTHOUSE FIREARMS.	S	Pres. To Gov. 7/ 25/2007	05-24-07	07-19-07
H1708	Stam	"SUBJECT TO " REAL ESTATE TRANSACTIONS.	*S	Re-ref Com On Judiciary I (Civil)	05-09-07	05-21-07
H1787	Adams	EXPUNCTION INFO/ DISMISSAL OR NOT GUILTY.	*S	Ref To Com On Judiciary II (Criminal)	07-23-07	
H1810	Ross	VAWA 2005 COMPLIANCE.	*SR	Ch. SL 2007-294	05-16-07	07-17-07
S0004	John Snow	SHERIFFS ACCESS RX INFO.	*S	Ref to the Com on Health and, if favorable, to the Com on Judiciary I	02-12-07	03-13-07
S0005	John Snow	METHADONE DISTRIBUTION/2ND DEGREE MURDER.	*S	Re-ref Com On Appropriations/ Base Budget	02-12-07	04-04-07
S0021	John Snow	CLARIFY DOG FIGHTING AND BAITING LAW.	*SR	Ch. SL 2007-181	02-12-07	03-15-07
S0034=	A. B Swindell	KILL POLICE ANIMAL.	*SR	Ch. SL 2007-80	02-12-07	03-13-07
S0083=	John Snow	AMEND DOMESTIC CRIM. TRESPASS.	*S	Re-ref Com On Appropriations/ Base Budget	02-12-07	04-30-07
S0092	Stan Bingham	DANGEROUS DOGS/ FINANCIAL RESPONSIBILITY	*S	Ref To Com On Judiciary III	02-12-07	05-08-07
S0132	Walter H. Dalton	PROTECT CHILDREN FROM SEXUAL PREDATORS ACT.	*S	Re-ref Com On Appropriations	02-14-07	05-17-07
S0184	Walter H. Dalton	PROTECT JUDICIAL OFFICER SAFETY	*SR	Ch. SL 2007-29	02-15-07	03-06-07
S0222=	W. Edward (Eddie	ARMED ROBBERY/ APPARENT FIREARMS.	*S	Re-ref Com On Appropriations/ Base Budget	02-21-07	05-17-07
S0222=	W. Edward (Eddie	ARMED ROBBERY/ APPARENT FIREARMS.	*S	Re-ref Com On Appropriations/ Base Budget	07-19-07	07-25-07
S0261=	Katie G. Dorsett	ACCESS TO INFORMATION FOR ADULT ADOPTEES.	S	Ref To Com On Judiciary ll (Criminal)	02-22-07	
S0333	Charlie S. Danne	EXTEND AGE CUTOFF/ CHILD SUPPORT.	S	Ref To Com On Judiciary ll (Criminal)	02-26-07	
S0393	David F. Weinste	FELONY/STEAL OR CUT ANOTHER'S TIMBER.	*S	Re-ref Com On Appropriations/ Base Budget	02-28-07	04-04-07
S0470	Larry Shaw	DRIVERS LICENSE FIX EXPIR./8-YEAR TO 65	*S	Re-ref Com On Appropriations/ Base Budget	04-05-07	04-17-07

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S0482	John Snow	USE OF EMERGENCY DOORS/COMMISSION OF LARCENY.	S	Ref To Com On Judiciary ll (Criminal)	03-05-07	
S0543=	Fletcher L. Hart	RESALE TICKETS VIA INTERNET	*S	Re-ref Com On Judiciary II	03-07-07	04-10-07
S0544=	Fletcher L. Hart	CABARRUS HOSPITAL CHARTER.	*SR	Ch. SL 2007-113	03-07-07	04-24-07
S0613=	Fletcher L. Hart	2007 TECHNICAL CORRECTIONS ACT	*S	Pres. To Gov. 8/3/ 2007	03-12-07	03-20-07
$ S0657	**Charlie S. Danne**	**STUDY COMM. ON STATE CIVIL RIGHTS ENFORCEMENT**	***S**	**Re-ref Com On Rules and Operations of the Senate**	**03-12-07**	**07-27-07**
S0677=	Doug Berger	EXPUNGE NONVIOLENT FELONY/YOUTHFUL OFFENDER.	*S	Re-ref Com On Finance	03-13-07	04-25-07
S0678	Doug Berger	ELECT DISTRICT JUDGES AT PRIMARY.	S	Ref To Com On Judiciary ll (Criminal)	03-13-07	
S0685=	Eleanor Kinnaird	STUDY DNR FORM SIGNATURES	*S	Ref To Com On Judiciary I	05-15-07	05-22-07
S0704	W. Edward (Eddie	EMINENT DOMAIN ATTORNEYS' FEES/COSTS.	S	Ref To Com On Judiciary II (Criminal)	03-14-07	
S0728	Fletcher L. Hart	MEDIATION IN DISTRICT CRIMINAL COURTS.	*S	Pres. To Gov. 7/ 31/2007	03-14-07	05-15-07
S0733=	Fletcher L. Hart	RENUNCIATION AMENDMENTS.	S	Ref To Com On Judiciary II (Criminal)	03-14-07	
S0735=	Walter H. Dalton	MEDIATION OF PROPERTY INSURANCE CLAIMS.-AB	S	Ref To Com On Insurance	03-14-07	04-02-07
S0758	John H. Kerr III	LIMITED DRIVING PRIVILEGE - DWLR.	*SR	Ch. SL 2007-293	03-14-07	04-02-07
S0777=	W. Edward (Eddie	AMEND CPA CRIMINAL PUNISHMENT.	*SR	Ch. SL 2007-83	03-15-07	04-10-07
S0785=	John H. Kerr III	ATV USE FOR EMERGENCIES.-AB	S	Ref To Com On Judiciary II (Criminal)	03-15-07	
S0789	Fletcher L. Hart	SPEEDING TO ELUDE ARREST/AGGRAVATING FACTORS.	*S	Re-ref Com On Appropriations/ Base Budget	03-15-07	05-17-07
S0790=	Fletcher L. Hart	TEST. ADDITIONS TO TRUSTS/WILL REFERENCES.	S	Ref To Com On Judiciary II (Criminal)	03-15-07	
S0850=	Fletcher L. Hart	SCHOOL BUS SAFETY.	S	Ref To Com On Judiciary II (Criminal)	03-19-07	
S0854	John Snow	AMEND PRIVATE PROTECTIVE SERVICES ACT.	*S	Pres. To Gov. 8/2/ 2007	03-19-07	06-25-07
S0855	John Snow	EXEMPT PRIVATE INVESTIGATORS/WINDOW TINTING.	S	Re-ref Com On Judiciary III	03-19-07	05-22-07
S0880	Doug Berger	BAIL BONDS/AMEND FORFEITURE REQUIREMENT.	*SR	Ch. SL 2007-105	03-19-07	04-30-07

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S0881	Doug Berger	DEFINE RESIDENCY REQUIREMENTS/BAIL BONDSMEN	*SR	Ch. SL 2007-228	03-19-07	04-25-07
S0930	Ed Jones	PRIVATE CORRECTIONAL OFFICERS.	*SR	Ch. SL 2007-162	03-20-07	05-14-07
S0940=	Katie G. Dorsett	LEGISLATIVE ACCESS TO RETIREMENT DATABASES.	*SR	Ch. SL 2007-103	03-20-07	05-14-07
S0944=	Walter H. Dalton	CHANGE PENALTY FOR HIT AND RUN VIOLATIONS.	S	Ref To Com On Judiciary I	03-20-07	05-01-07
S0947	Kay R. Hagan	UNIFORM TRUST CODE CHANGES.	*SR	Ch. SL 2007-106	03-20-07	04-24-07
S0988	Doug Berger	ILLEGAL IMMIGRANTS TAX COLLECTION ENFORCEMENT.	S	Re-ref Com On Appropriations/ Base Budget	03-20-07	05-22-07
S0989	Doug Berger	GENITAL MUTILATION/ CRIMINAL OFFENSE.	S	Ref To Com On Judiciary II (Criminal)	03-20-07	
S1019	Fletcher L. Hart	INVESTIGATIONS OF CORPORATIONS/ PARTNERSHIPS.	S	Ref To Com On Judiciary II	03-21-07	05-17-07
S1020=	Fletcher L. Hart	REVISE SIMULTANEOUS DEATH ACT.	S	Ref To Com On Judiciary II (Criminal)	03-21-07	
S1022	Fletcher L. Hart	ELECTRONIC PUBLICATION OF PUBLIC NOTICE.	S	Ref To Com On Judiciary II (Criminal)	03-21-07	
S1023=	Fletcher L. Hart	LOCAL SPA EMPLOYEE STATUS/UNC PUBLIC RECORDS.	*S	Pres. To Gov. 7/ 26/2007	03-21-07	05-16-07
S1026=	Fletcher L. Hart	DRIVERS LICENSE ISSUANCE/EXPIRATION DATES.	*SR	Ch. SL 2007-56	03-21-07	04-02-07
S1026=	Fletcher L. Hart	DRIVERS LICENSE ISSUANCE/EXPIRATION DATES.	*SR	Ch. SL 2007-56	04-04-07	04-10-07
S1046	Fletcher L. Hart	ADVANCE DIRECTIVES/ HEALTH CARE PWR. ATTY.-AB	*S	Re-ref Com On Judiciary I	03-21-07	05-08-07
S1049=	Fletcher L. Hart	PROTECT MINOR/PORNO. & PROSTITUTION OFFENSES.	S	Ref To Com On Judiciary II (Criminal)	03-21-07	
S1202	Jim Jacumin	EST. COMMISSION ON LITTERING/STUDY	*S	Re-ref Com On Rules and Operations of the Senate	03-26-07	06-25-07
S1219	W. Edward (Eddie	NO CONTINGENT FEES - ECONOMIC DEVELOPMENT.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1270=	John Snow	AMEND LARCENY LAWS.	*S	Pres. To Gov. 8/2/ 2007	03-26-07	05-08-07
S1279	John Snow	LIMIT LIABILITY/WHITE-WATER RAFTING.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1282	John Snow	WILDLIFE PROTECTORS TO ENFORCE CRIMINAL	S	Ref to the Com on Wildlife	03-26-07	05-17-07

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		LAWS.		Resources and, if favorable, to the Com on Judiciary III		
S1284=	John Snow	MODIFY SCHOOL EMPLOYEE CONFIDENTIALITY LAW.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1285	John Snow	BIOPTIC LENSES/ DRIVERS LICENSE TESTS.	S	Re-ref Com On Appropriations/ Base Budget	03-26-07	05-17-07
S1286	John Snow	ENTRY OF INSPECTORS ONTO PRIVATE LANDS.	S	Re-ref Com On Judiciary II (Criminal)	03-26-07	05-17-07
S1286	John Snow	ENTRY OF INSPECTORS ONTO PRIVATE LANDS.	S	Re-ref Com On Judiciary II (Criminal)	05-23-07	
S1287	John Snow	JUDICIAL DEPARTMENT ACCESS TO SSN INFORMATION.	*SR	Ch. SL 2007-249	03-26-07	05-17-07
S1359	Austin M. Allran	RED LIGHT EXCEPTION FOR MOTORCYCLES.	*SR	Ch. SL 2007-260	03-26-07	04-24-07
S1359	Austin M. Allran	RED LIGHT EXCEPTION FOR MOTORCYCLES.	*SR	Ch. SL 2007-260	04-25-07	05-16-07
S1399	Charlie S. Danne	BAN MOBILE PHONE USE WHILE DRIVING.	*S	Re-ref Com On Judiciary II (Criminal)	03-26-07	05-23-07
S1399	Charlie S. Danne	BAN MOBILE PHONE USE WHILE DRIVING.	*S	Re-ref Com On Judiciary II (Criminal)	05-24-07	
S1407=	Fletcher L. Hart	RESALE OF TICKETS VIA INTERNET.	*S	Re-ref Com On Finance	03-26-07	05-17-07
S1408	Fletcher L. Hart	CLARIFY DISCIPLINARY ACTION/APPRAISERS BOARD.	*S	Pres. To Gov. 7/ 28/2007	03-26-07	05-17-07
S1430	Bob Atwater	AMEND CRIM OFFENSES/ INJURY TO PROPERTY.	*S	Re-ref Com On Appropriations/ Base Budget	03-26-07	05-17-07
S1432	Bob Atwater	CHALLENGE TO ADMINISTRATIVE SUBPOENA.	*SR	Ch. SL 2007-251	03-26-07	05-22-07
S1449=	John Snow	REGULATE SALES/GLASS VIALS & CIGARETTE WRAP.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1460	Fletcher L. Hart	STRENGTHEN RAPE SHIELD LAW.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1461=	Fletcher L. Hart	AGGRAVATING FACTOR/NO PROBATION COMPLIANCE.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1477=	Ed Jones	INHERENTLY DANGEROUS ANIMALS.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1491=	Fletcher L. Hart	PROHIBIT BLUNT WRAPS	*S	Ref To Com On Judiciary II	03-27-07	05-17-07

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Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 1, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 132	Protect Children From Sexual Predators Act.	Senator Dalton
SB 184	Protect Judges Safety.	Senator Dalton

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary ll (Criminal) Committee
Thursday, March 1, 2007, 10:00 AM
Rm. 1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 132	Protect Children From Sexual Predators Act.	Senator Dalton
SB 184	Protect Judges Safety.	Senator Dalton

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 1, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 1, 2007, with fifteen members present.

SB 184 (Protect Judges Safety.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Snow so moved and the motion passed. Senator Dalton was recognized to explain the bill. He offered an amendment and the amendment was accepted. Questions by Senators Kerr, Jones, Jacumin, Berger, Dorsett and Dannelly were answered by Ms. Kory Goldsmith, Staff Attorney, Senator Dalton and Mr. Perry Newson of the Ethics Commission. Senator Swindell moved for a favorable report of the Proposed Committee Substitute as amended, rolled into a new Committee Substitute. All voted and the motion carried.

SB 132 (Protect Children From Sexual Predators Act.) Senator Hartsell stated that no action would be taken on the bill at this meeting. Senator Dalton was recognized to explain the reasoning for the bill. He then introduced Attorney General Roy Cooper for further explanation. Senators Dalton and Snow spoke on the bill. Questions from Senators Bingham, Apodaca, Queen, Kerr, Berger and Allran were answered by Senator Dalton, Attorney General Cooper and Mr. Gregg McCloud from the office of the Attorney General.

Senator Hartsell noted that the Committee would meet on Tuesday, March 6th, to address organized retail thefts. Mr. Andy Ellen, representing the North Carolina Retail Merchants Association was recognized to explain the reasons for addressing the subject.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Tuesday, March 06, 2007

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

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

S.B. **184** Protect Judges Safety.

Draft Number:	PCS 55168
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 184

Short Title:	Protect Judges Safety.	(Public)
Sponsors:	Senators Dalton; Atwater, Goss, and Snow.	
Referred to:	Judiciary II (Criminal).	

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUSTICES AND JUDGES TO LIST A BUSINESS ADDRESS ON A STATEMENT OF ECONOMIC INTEREST AND TO ALLOW THE ADDRESS OF A SPOUSE AND THE NAMES AND ADDRESSES OF MINOR CHILDREN TO REMAIN CONFIDENTIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-24(a)(1) reads as rewritten:

"(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.~~ person, except that a justice or judge may provide a business address instead of the home address. The justice or judge shall provide a home address on a separate form which shall be held confidential by the Commission and is not a public record. The name and home address of any minor child of the justice or judge who is an immediate family member, and the home address of the spouse of the justice or judge, shall be provided to the Commission on a separate form which shall be held confidential by the Commission and is not a public record. The justice or judge shall list on the public form the initials of any minor child for whom a separate report is provided under this subdivision.

...."

SECTION 2 This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 184
PROPOSED COMMITTEE SUBSTITUTE S184-CSRC-2 [v.3]

2/28/2007 9:19:24 PM

Short Title: Protect Judges Safety. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUSTICES AND JUDGES TO LIST A BUSINESS ADDRESS ON A STATEMENT OF ECONOMIC INTEREST AND TO KEEP THE HOME ADDRESS OF JUSTICES AND JUDGES AND THE NAMES OF UNEMANCIPATED MINOR CHILDREN CONFIDENTIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-24(a) reads as rewritten:

"(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~~ Except as otherwise provided in this subdivision, the name, home address, occupation, employer, and business of the person. A justice or judge may use a business address instead of the home address on the form required in this subsection. The justice or judge may also use the initials instead of the name of any unemancipated child of the justice or judge who also resides in the household of the justice or judge. If the judge or justice provides a business address or provides the initials of an unemancipated child, the justice or judge shall concurrently provide a home address and the name of the unemancipated child to the Commission. The home address and the name of an unemancipated child provided by the justice or judge to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

...."

SECTION 2 G.S. 138A-22(d) reads as rewritten:

"(d) 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,~~ G.S. 163-106 or G.S. 163-323, 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."

SECTION 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3/1/07

S. B. No. 184 Amendment No. _____

COMMITTEE SUBSTITUTE X S184-CSRC-2[v.3] (to be filled in by Principal Clerk)

Rep.)
Sen.) Dalton

1 moves to amend the bill on page 2, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "Section 3. This act becomes effective
6 January 1, 2007."
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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 184:
Protect Judges Safety

BILL ANALYSIS

Committee:	Senate Judiciary ll (Criminal)	**Date:**	February 28, 2007
Introduced by:	Sen. Dalton	**Summary by:**	Kory Goldsmith
Version:	PCS to First Edition S184-CSRC-2		Committee Co-Counsel

SUMMARY: ***Senate Bill 184 would allow a justice or judge to use a business address instead of a home address on the statement of economic interest that must be filed under the State Ethics Act. It would also allow the justice or judge to use the initials of an unemancipated minor on those same forms. The justice or judge must provide his or her home address and the names of the minors to the State Ethics Commission. That information would not be a public record and would be privileged and confidential.***

The PCS primarily makes technical and conforming changes.

CURRENT LAW: The State Government Ethics Act (S.L. 2006-201) requires that all covered persons file a statement of economic interest (SEI) prior to that person's initial appointment, election, or employment and no later than March 15th every year thereafter.[i] The requirement also applies to persons holding covered positions on January 1, 2007.[ii]

A covered person is defined as a legislator, public servant, or judicial officer. A judicial officer if a justice or judge of the General Court of Justice, a district attorney, a clerk of court, or any person elected or appointed to any of those positions prior to taking office.[iii]

The statement of economic interest must include the name, address, occupation, employer, and business of the person filing the statement and the filing person's immediate family. An immediate family member is defined as an unemancipated child of the covered person residing in the household and the covered person's spouse if not legally separated. A member of the covered person's extended family is also considered a member of the immediate family if actually residing in the covered person's household.[iv]

BILL ANALYSIS:

Section 1 of the PCS allows a justice or judge to list a business address and/or the initials of an unemancipated minor on the statement of economic interest. The justice or judge must also provide to the State Ethics Commission the justice's or judge's home address and the name of the unemancipated minor. The information provided to the State Ethics Commission would not be a public record and would be privileged and confidential. It should be noted, however, that the justice's or judge's home address is included on the notice of candidacy that must be filed with the State Board of Elections, and that information is a public record.

Section 2 adds the correct reference for the procedure that justices and judges use to file a notice of candidacy. Those filings go to the State Board of Elections, not a county board of elections.

EFFECTIVE DATE: The act would be effective when it becomes law.

BACKGROUND: The Code of Judicial Conduct is the primary ethics enforcement for the Judicial branch. The Code requires a judge to report the "name and nature of any source or activity from which

the judge received more than $2,000 in income during the calendar year for with the report is filed."[1] Otherwise, judges have not been required to file statements of economic interest and candidates for judicial positions who were not already judges were not required to file any statements of economic interest.

Most of the ethics enforcement for the Judicial branch will remain with the Judicial Standards Commission. However, judges are subject to the ethical standards for a covered person and must file a statement of economic interest. Judges can not obtain advisory opinions from the State Ethics Commission, but have to go to the Judicial Standards Commission. Any complaint filed against a judge with the State Ethics Commission is sent immediately to the Judicial Standards Commission.

S0184e1-SMRC-CSRC-2

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[i] G.S. 138A-22(a).
[ii] S.L. 2006-201, Sec. 23.(a).
[iii] G.S. 138A-3(10) and (19).
[iv] G.S. 138A-3(17).

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[1] North Carolina Code of Judicial Conduct, Canon 6A.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 132

Short Title:	Protect Children From Sexual Predators Act.	(Public)
Sponsors:	Senators Dalton, Snow, Boseman; Apodaca, Brunstetter, Cowell, Dorsett, Goodall, Goss, Hagan, Jones, Queen, Stevens, Tillman, and Weinstein.	
Referred to:	Judiciary ll (Criminal).	

February 14, 2007

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO PROVIDE THAT IT SHALL BE ILLEGAL FOR THE OWNER OR OPERATOR OF A SOCIAL NETWORKING WEB SITE TO ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR MAINTAIN A PROFILE WEB PAGE ON A SOCIAL NETWORKING WEB SITE WITHOUT THE PERMISSION OF THE MINOR'S PARENT OR GUARDIAN AND WITHOUT PROVIDING SUCH PARENT OR GUARDIAN ACCESS TO SUCH PROFILE WEB PAGE AND TO PROVIDE FOR PENALTIES; TO PROVIDE THAT A FILM PROCESSOR, PHOTO FINISHER, OR COMPUTER TECHNICIAN WHO, IN THE COURSE OF WORK, ENCOUNTERS AN IMAGE OF A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE CUSTOMER REQUESTING THE WORK TO THE APPROPRIATE AUTHORITIES; TO INCREASE THE PENALTY FOR CERTAIN OFFENSES OF SOLICITATION OF CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; TO MAKE IT A FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION; TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO CONTROLLED SUBSTANCES AND TO AMEND THE PROCEDURE FOR CONVENING AN INVESTIGATIVE GRAND JURY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or

performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a ~~minor.~~minor, and G.S. 14-190.25, film, digital image, video processor or photo finisher or computer technician to report digital image, video or film or computer images containing pictures of a minor engaging in sexual activity.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
   a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
   b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
   c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:
   a. Masturbation, whether done alone or with another human or an animal.
   b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
   c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
   d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
   e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.
   f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or

vagina, except when done as part of a recognized medical procedure.

g. The lascivious exhibition of the genitals or pubic area of any person.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state."

SECTION 2. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 3. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class D felony."

SECTION 4. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class E felony."

SECTION 5. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-190.25. Film, digital image, video processor or photo finisher or computer technician to report digital image, video or film or computer images containing pictures of a minor engaging in sexual activity.**

(a) Any retail or wholesale film, digital image or video processor or photo finisher who is requested to develop film, digital image or video and any computer technician working with a computer who views an image of a minor or a person who appears to be a minor who is engaging in sexual activity shall report the name and address of the individual requesting the development of the film, or the owner or person in possession of the computer to the Cyber Tip Line at the National Center for Missing and Exploited Children and to the appropriate law enforcement official in the county or municipality in which the image or film was submitted. Any person complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report.

(b) Any person who knowingly fails to report as required by this section is guilty of an infraction punishable by a fine of two hundred fifty dollars ($250.00)."

SECTION 6. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is ~~a Class H felony.~~punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant or the person for whom the defendant was arranging the meeting in violation of this section actually appears at the meeting location, then the violation is a Class E felony."

SECTION 7. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) For purposes of this section, the term "official inquiry" means the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law.

(b) 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.

(c) In response to an official inquiry by a sworn agent of the State Bureau of Investigation, any person who shall willfully do any of the following is guilty of a Class H felony:

(1) Falsify or conceal by any trick, scheme, or device a material fact.

(2) Make any materially false, fictitious, or fraudulent statement or representation.

(3) Use any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry."

SECTION 8. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Requiring parental permission for minors to access social networking Web sites.**

(a) Definitions. – The following definitions apply in this section:

(1) Internet. – The global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(2) Person. – A sole proprietor, partnership, corporation, limited liability company, trust, joint venture, or other legally cognizable entity.

(3) Protected computer. – Any computer that, at the time of an alleged violation of any provision of this section involving that computer, was located within the geographic boundaries of the State of North Carolina.

(4) Social networking Web site. – A Web site on the Internet that contains profile web pages of the members of the Web site containing the name

or nickname of the member, photographs placed on the profile web page by the member, and other personal information about the member; contains links to other profile web pages on the social networking Web site of friends or associates of the member that can be accessed by other members or visitors to the Web site; and provides members of or visitors to the social networking Web site the ability to leave messages or comments on the profile web page that are visible to all or some visitors to the profile web page and may also include a form of electronic mail for members of the social networking Web site.

(b) Offense. – It is unlawful for the owner or operator of a social networking Web site to allow a minor using a protected computer to become a member or to create or maintain a profile web page on a social networking Web site without the permission of the minor's parent or guardian and without providing the parent or guardian access to the profile web page at all times. The identity of the parent or guardian shall be verified by comparing the personal information provided by the parent or guardian against information found in databases containing information aggregated about individuals.

(c) Penalties. – Any person violating this section shall be punished as follows:

(1) On the first offense, a person is guilty of a Class 3 misdemeanor.

(2) On the second or subsequent offense, a person is guilty of a Class 1 misdemeanor."

SECTION 9.(a) Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Investigative grand jury.**

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission of or conspiracy to commit any of the following:

(1) The misdemeanor or felony offense of obstruction of justice (Common law offense).

(2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).

(3) A violation of G.S. 14-90 (Embezzlement of property received by virtue of office or employment), G.S. 14-100 (Obtaining property by false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of notes, checks, and other securities; counterfeiting of instruments).

(4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the dissemination of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).

(5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).

(6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening), G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to

discharge duties), G.S. 14-234 (Public officers or employees benefiting from public contracts), or G.S. 14-234.1 (Misuse of confidential information).

(7) A violation of G.S. 14-254 (Malfeasance of corporation officers and agents).

(8) A violation of Article 37 of Chapter 14 of the General Statutes (Relating to lotteries, gaming, bingo, and raffles).

(9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled substances and continuing criminal enterprises).

(10) A violation of Article 20, 22, or 22A of Chapter 163 of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulation of contributions and expenditures in political campaigns).

(b) Appointment of Permanent Three-Judge Panel to Determine Whether to Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years thereafter, the Chief Justice shall appoint a permanent panel of three superior court judges to determine whether to order an investigative grand jury convened under this section. The panel of judges shall be appointed to serve for a term of two years. The Chief Justice shall fill any vacancy that occurs on the panel before the two-year term ends.

(c) Procedure for Determining Whether to Convene Investigative Grand Jury. – A written petition for convening of an investigative grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the petition to the panel of three judges established under subsection (b) of this section to determine whether to order the grand jury convened. An investigative grand jury under this section may be convened if the three-judge panel determines all of the following:

(1) The petition alleges the commission of or a conspiracy to commit any of the offenses listed in subsection (a) of this section, any part of which violation or conspiracy occurred in the county where the proposed investigative grand jury sits or will sit, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury.

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury

to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed.

A grand jury authorized by this section may be convened from an existing grand jury or grand juries authorized by G.S. 15A-622(b) or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding G.S. 15A-622(b), grand jurors impaneled pursuant to this section shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(d) Investigative Grand Jury Proceedings and Operations. – If an investigative grand jury is convened pursuant to this section, notwithstanding G.S. 15A-623(d), a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, the prosecutor may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with the witness's counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding G.S. 15A-623(e), the record of the examination of witnesses shall be made available to the examining prosecutor, and the prosecutor may disclose contents of the record to other investigative or law enforcement officers, the witness or the witness's attorney to the extent that the disclosure is appropriate to the proper performance of the prosecutor's official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this section may be made upon written order of a superior court judge if the judge determines disclosure is essential:

(1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or

(2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to this section, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera

proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A of the General Statutes. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court."

SECTION 9.(b) G.S. 15A-622(h) is repealed.

SECTION 9.(c) G.S. 15A-623(h) is repealed.

SECTION 10. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 132:
Protect Children From Sexual Predators Act

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 1, 2007
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 132 would: (i) amend the definition of "sexual activity" as it relates to offenses concerning minors; (ii) require that a film processor or photo finisher who is requested to develop film, or a computer technician working with a computer, who encounters an image of a minor engaging in sexual activity must report the name of the customer requesting the work to the appropriate authorities; (iii) make it unlawful for the owner or operator of a social networking web site to allow a minor using a protected computer to create or maintain a profile web page on a social networking web site without the permission of the minor's parent or guardian and without providing such parent or guardian access to such profile web page; (iv) make it a Class H felony to lie to a sworn SBI agent conducting an official investigation; (v) increase penalties for several offenses, including solicitation of child by computer to commit an unlawful sex act, and 1st, 2nd, and 3rd degree sexual exploitation of a minor; and (vi) authorize the convening of a grand jury to investigate allegations regarding the commission or conspiracy to commit a number of listed crimes***

BILL ANALYSIS:

- **The bill would amend the definition of "sexual activity" as it relates to offenses concerning minors to include "[t]he lascivious exhibition of the genitals or public area of any person."** This language is included in federal law (18 USCS § 2256).

- **The bill would create several new offenses:**
  - Requires that a film, digital image, or video processor, or photo finisher who is requested to develop film, or computer technician working with a computer, who encounters an image of a minor engaging in sexual activity must report the name of the customer requesting the work to the appropriate authorities. Knowing failure to report as required is an infraction punishable by a fine of $250.
  - Makes it illegal for the owner or operator of a social networking web site to allow a minor using a protected computer to create or maintain a profile web page on a social networking web site without the permission of the minor's parent or guardian and without providing such parent or guardian access to such profile web page. A 1st offense is punishable as a Class 3 misdemeanor, 2nd or subsequent offenses are punishable as Class 1 misdemeanors[1].

    The bill defines *"social networking web site"* as "[a] Web site on the Internet that contains profile web pages of the members of the Web site containing the name or nickname of the member, photographs placed on the profile web page by the member, and other personal information about the member; contains links to other profile web pages on the social

[1] A Class 3 misdemeanor is punishable by 1 to 10 days of community punishment, assuming no prior convictions. A Class 1 misdemeanor is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

networking Web site of friends or associates of the member that can be accessed by other members or visitors to the Web site; and provides members of or visitors to the social networking Web site the ability to leave messages or comments on the profile web page that are visible to all or some visitors to the profile web page and may also include a form of electronic mail for members of the social networking Web site."

- Makes it a Class H felony to lie to a sworn SBI agent in response to an official inquiry.

  The bill defines "*official inquiry*" as "the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law."

➢ **The bill would increase penalties for several offenses as follows:**

Offense	Current Penalty	Proposed Penalty
1st degree sexual exploitation of a minor (GS 14-190.16)	Class D felony	[2]Class C felony
2nd degree sexual exploitation of a minor (GS 14-190.17)	Class F felony	[3]Class D felony
3rd degree sexual exploitation of a minor (GS 14-190.17A)	Class I felony	[4]Class E felony
Solicitation of child by computer to commit an unlawful sex act (GS 14-202.3)	Class H felony	Class H felony, except if the defendant or person the defendant has made arrangements for actually appears at the meeting in which case it is a Class E felony

➢ **The bill would create a new statute that authorizes the convening of a grand jury to investigate allegations regarding the commission or conspiracy to commit a number of listed crimes.** It would require that the Chief Justice appoint a permanent panel of three superior court judges every two years (beginning Dec. 1, 2007) to determine whether to order an investigative grand jury.

The bill would repeal certain statutes that authorize convening of a grand jury to investigate allegations of crimes involving controlled substances. These provisions are incorporated into the new statute, except for requirements under the existing law concerning approval of grand jury petitions by three members of the NC Conference of District Attorneys, and that the Attorney General and the Clerk of the NC Supreme Court concur in the petition.

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[2] The presumptive range of punishment for a Class C felony when there are no prior convictions is 58 to 73 months of active punishment.

[3] The presumptive range of punishment for a Class D felony when there are no prior convictions is 51 to 64 months of active punishment.

[4] The presumptive range of punishment for a Class E felony when there are no prior convictions is 20 to 25 months of intermediate or active punishment.

BACKGROUND: See attached memo entitled "Protecting Children from Sexual Predators," from Attorney General Roy Cooper, dated Feb. 12, 2007.

EFFECTIVE DATE: The bill would become effective December 1, 2007, and apply to offenses committed on or after that date.

S0132e1-SMRI

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 1 March 2007

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kwin West	DOJ/NC SBI
BILL WEIS	SBI
Pam Tully	DOJ/SBI
Jerry Ratley	DOJ/SBI
Erik A. Hooks	DOJ / SBI
Roy Cooper	DOJ
Judy McConnell	Daily Bulletin
Perry Newson	Ethics Commission
Kathy Edwards	Ethics Comm'n
John Bason	DOJ
Brenda Menard	DOJ
Kim Howes	Prevent Child Abuse NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 1 March 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JAY CHAUDHARI	DOJ
Cam Cowell	BPMTIC
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
DANIEL BAUM	KENNEDY COVINGTON
BILL SCOGGIN	KCLH
Kristi Hyman	NCDOJ
Gary Mc[illegible]	NCDOT
Amanda Stokes	Smith Moore
KEVIN LEONARD	WCSR
Bryce Ball	FRD

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 1 March 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Troy Page	NC Sentencing Commission
Mildred Spearman	NCDOC
Ref Lee	Conference of DAs
Laura Parker	Conference of DA's
C Ellis	NCATL
Jami Fitzgerald	NC Family Policy Council
MA DESILVA	NC DOJ
Noelle Talley	NC DOJ
JENNIFER CANADA	NCDOJ
Melissa Lovell	NC DOJ
Stan Pace	Verizon
Cullen Browder	WRAL

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 6, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
	TBA	

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
BILL SPONSOR NOTICE

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BILL NO.	SHORT TITLE	SPONSOR

Presentation and discussion on Organized Retail Crime and Loss Prevention.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, March 6, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations — **Presentations and discussions on Organized Retail Crime and Loss Prevention**

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 6, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 6, 2007, with thirteen members present. Senator Hartsell introduced pages Danielle Bringard and Arrington Moore and thanked them for their service.

Senator Hartsell noted that this meeting was for an introduction to the world of Organized Retail Crime and the effects it has on our state. He recognized Mr. Andy Ellen who represents the North Carolina Retail Merchants Association for further explanation. Mr. Ellen then introduced Mr. Scott Mason, of Lowe's Home Improvement Corporate Headquarters, Mr. Bill Suthard, representing the legal enforcement section of Lowe's Home Improvement and Mr. Moe McKnight, representing Lowe's Food Stores. Mr. Mason and Mr. McKnight gave power point presentations showing statistics, information and videos of actual thefts. Mr. Suthard explained the legal and prosecutorial aspects.

Questions from Senators Berger, Kerr, Alran, Jones, Bingham, Dorsett and Atwater were answered by Mr. Suthard, Mr. McKnight, Mr. Mason and Mr. Ellen.

Senator Hartsell asked Senator Snow to chair a subcommittee to study this problem and make recommendations to the committee. Senators Atwater, Jones, Goodall and Bingham were named to the subcommittee.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary II — 6 March 2007

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Mason	Lowe's Companies, Inc 1000 Lowe's Blvd, Mooresville NC 28117
Lindsey Kueffner	NC Retail Merchants Assoc.
Elizabeth Dalton	NCRMA
Mae McKnight	Lowe's Foods
Bill Suthard	Lowe's Companies
Andy Ellen	NCRMA
Scott St. Clair	BELK INC.
David Burnette	Harris Teeter
Daniel Baun	Kennedy Covington
Tami Fitzgerald	NC Family Policy Council
Jonathan Ducote	Sen. Snow

North Carolina - Locations by State Senate District

Total: 89

ECONOMIC IMPACT

Investment per Store*: $18.5 Million
Employees Statewide: 17,636

*Store Average

CONTRIBUTIONS TO NC COMMUNITIES AND CHARITIES SINCE 1998: $7.1 MILLION

STATE SENATE DISTRICT	CITY
NC001	ELIZABETH CITY
	WASHINGTON
NC002	NEW BERN
	MOREHEAD CITY
NC004	ROANOKE RAPIDS
	GARYSBURG -- RDC
NC005	WINTERVILLE
	GOLDSBORO
NC006	JACKSONVILLE
NC007	HENDERSON
NC008	HAMPSTEAD
	SOUTHPORT
	SHALLOTTE
NC009	WILMINGTON (2)
NC010	KINSTON
	CLINTON
NC011	WILSON
	ROCKY MOUNT
NC012	SMITHFIELD
	GARNER
NC013	LUMBERTON
NC014	RALEIGH
	KNIGHTDALE
NC015	WAKE FOREST
	RALEIGH
NC016	CARY (2)
NC017	APEX
	GARNER
NC018	SANFORD
NC020	DURHAM

STATE SENATE DISTRICT	CITY
NC021	FAYETTEVILLE (2)
NC022	SOUTHERN PINES
	ERWIN
NC023	CHAPEL HILL
NC024	BURLINGTON
	MEBANE
NC025	LAURINBURG
	ROCKINGHAM
	ALBEMARLE
NC026	STOKESDALE -- ICC
	REIDSVILLE
NC027	GREENSBORO (2)
NC028	GREENSBORO
NC029	ASHEBORO
NC030	MOUNT AIRY
NC031	KERNERSVILLE
NC032	WINSTON SALEM (2)
NC033	HIGH POINT
	THOMASVILLE -- MC
	LEXINGTON
NC034	SALISBURY
	MOCKSVILLE
NC035	MONROE
	MATTHEWS
NC036	CONCORD
NC037	CHARLOTTE
NC038	CHARLOTTE
NC039	CHARLOTTE (2)
NC040	HUNTERSVILLE
	CHARLOTTE

STATE SENATE DISTRICT	CITY
NC041	STATESVILLE
	MOORESVILLE -- Store + CSC
	LINCOLNTON
NC042	STATESVILLE -- RDC
	HICKORY
NC043	GASTONIA
NC044	MORGANTON
	LENOIR
NC045	BOONE
	WILKESBORO -- Store + CSC
	ELKIN
	N. WILKESBORO -- ICC
NC046	SHELBY
	FOREST CITY
NC047	MARION
	WAYNESVILLE
NC048	ARDEN
	HENDERSONVILLE
NC049	ASHEVILLE (2)
NC050	BREVARD
	FRANKLIN
	MURPHY

RDC: Regional Distribution Center
FDC: Flatbed Distribution Center
ICC: Import Construction Center
MC: Millwork Center
CSC: Customer Support Center

ORGANIZED RETAIL THEFT

Bill Suthard
Manager of ORT Investigations
Lowe's Corporate Loss Prevention

LOWE'S
Loss Prevention

According to the FBI's Uniform Crime Reports, "shoplifting losses are roughly equivalent to the cost of auto theft."

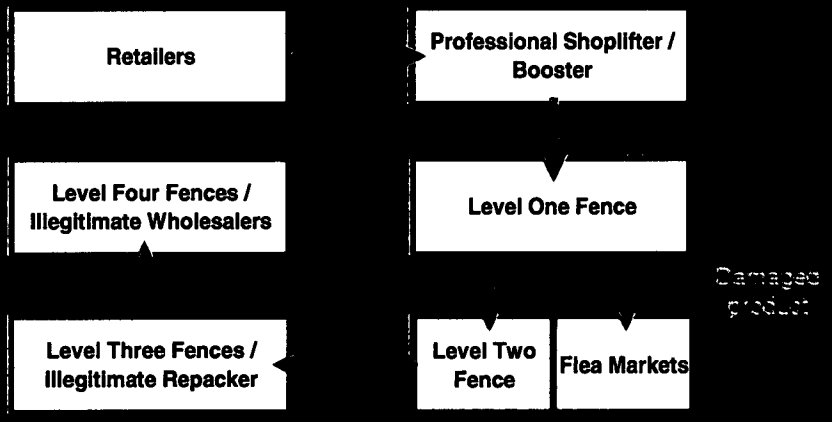
2006 - FBI
(Uniform Crime Report)

What is Organized Retail Theft (ORT)?

Retail theft attributed to organized criminal networks that profit from stealing and reselling retail goods.

"The Professional Shoplifter"

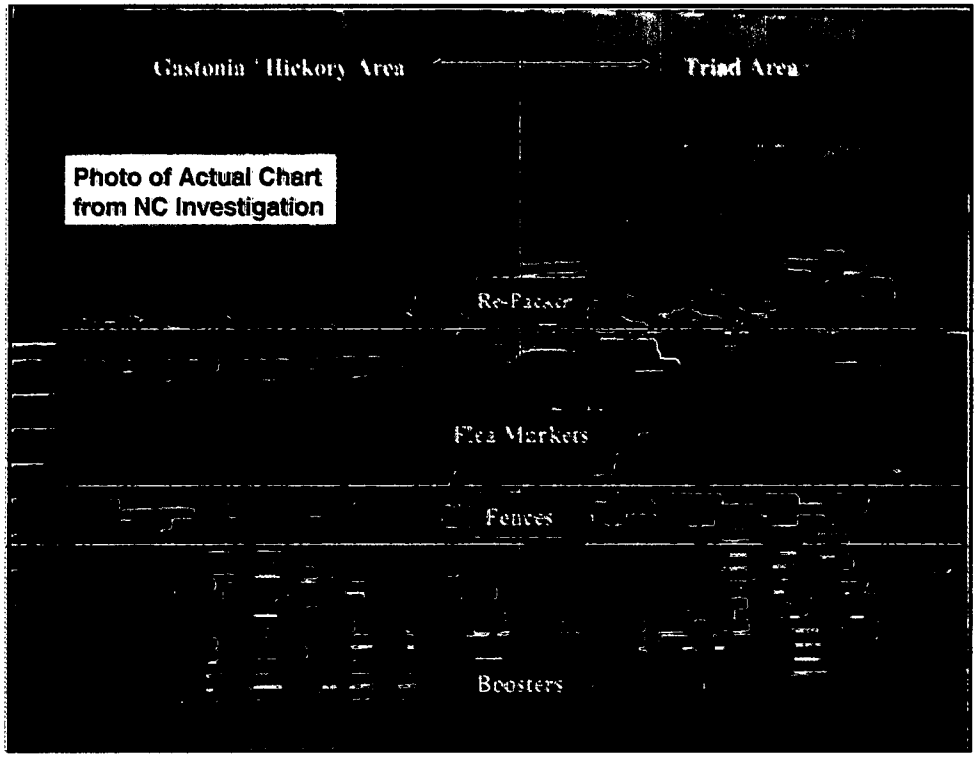
ORT RINGS
Operation and Structure



Illegitimate wholesalers are often also diverters. They sell to retailers to move stolen product back into the retail market. They will often mix legitimate product with stolen product.

Many own/operate retail stores.

LOWE'S
Loss Prevention



ORT Case Examples

LOWE'S
Loss Prevention

Bar Code Switching

LOWE'S
Loss Prevention

Bar Code Switching

Suspect #1

In this scenario, suspect 1 calls a LOWES associate over to him. While suspect #2 walks out to the garden register to make a purchase of 3 Husqvarna chainsaws bearing barcodes for An electric chainsaw.

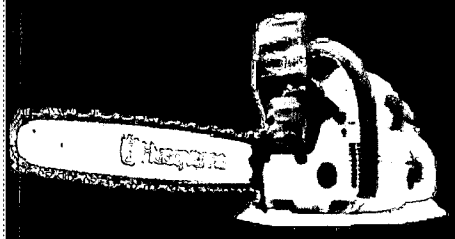
Total Loss = $1,305

Suspect #2

Item *Purchased* vs. *Taken*

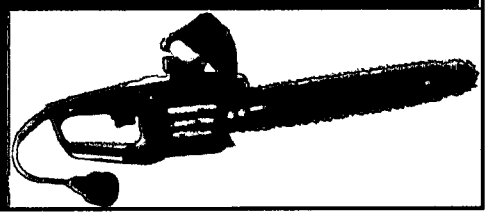
TAKEN

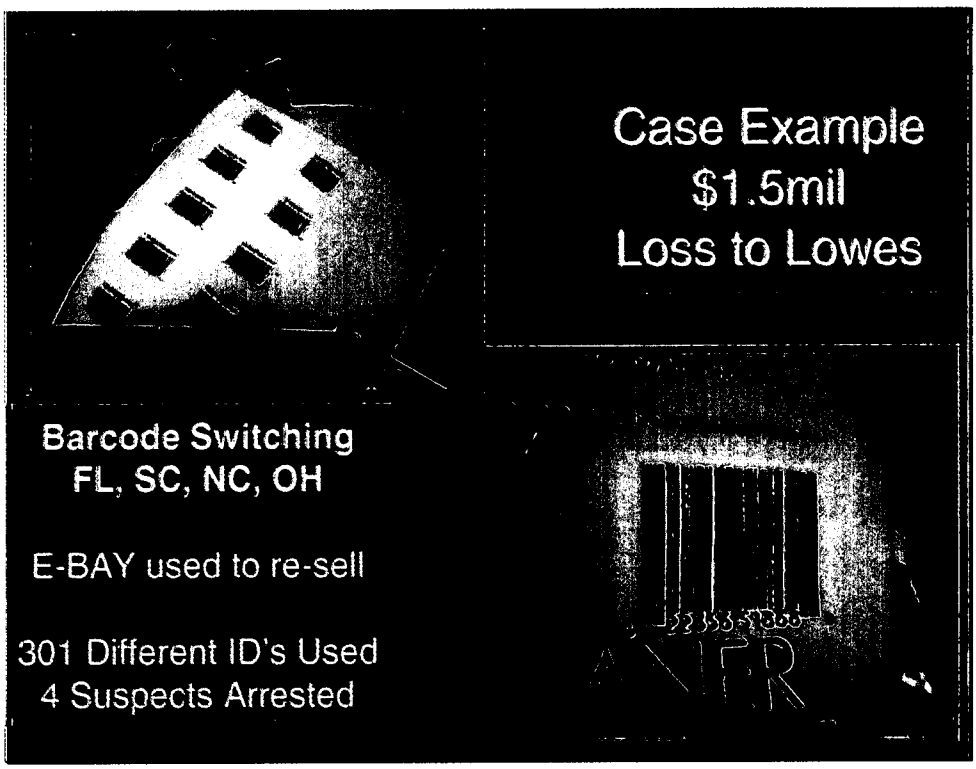
Husqvarna Chainsaw
$479

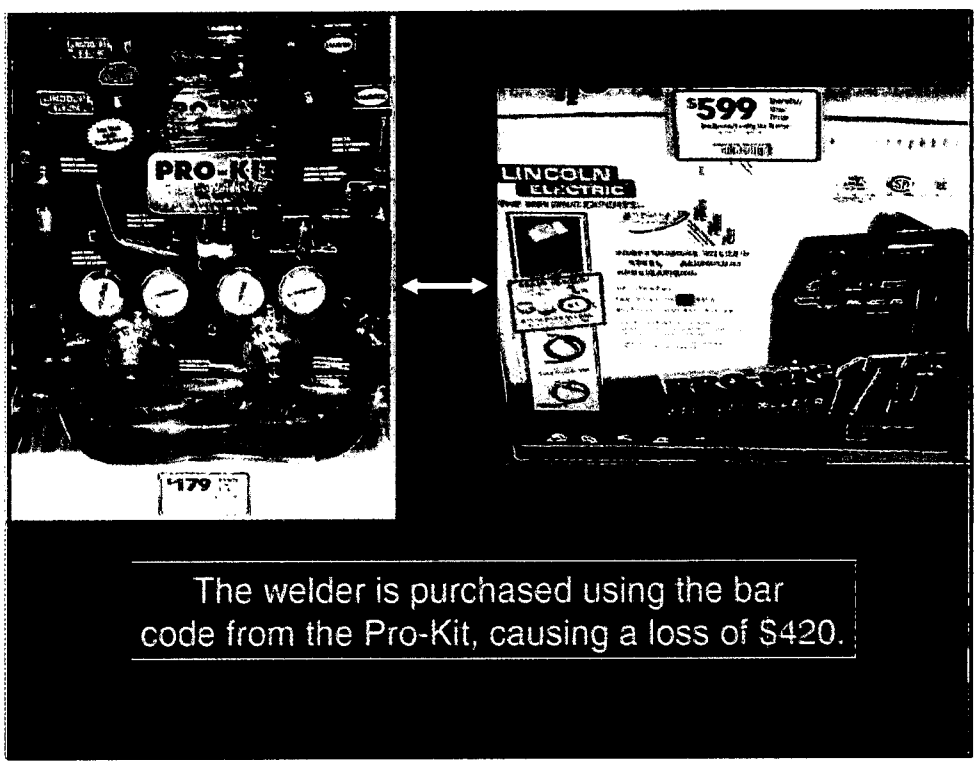


SCANNED

Electric Chainsaw $44




Case Example
$1.5mil
Loss to Lowes
Barcode Switching
FL, SC, NC, OH
E-BAY used to re-sell
301 Different ID's Used
4 Suspects Arrested


PRO-KIT
$179
$599
LINCOLN
ELECTRIC
The welder is purchased using the bar code from the Pro-Kit, causing a loss of $420.

Suspect purchases a Mig Welder using the bar code for a welding kit.

Welder $599
Kit $179
Loss of $420 each time.

Suspect was documented doing this 32 times IN 2006.

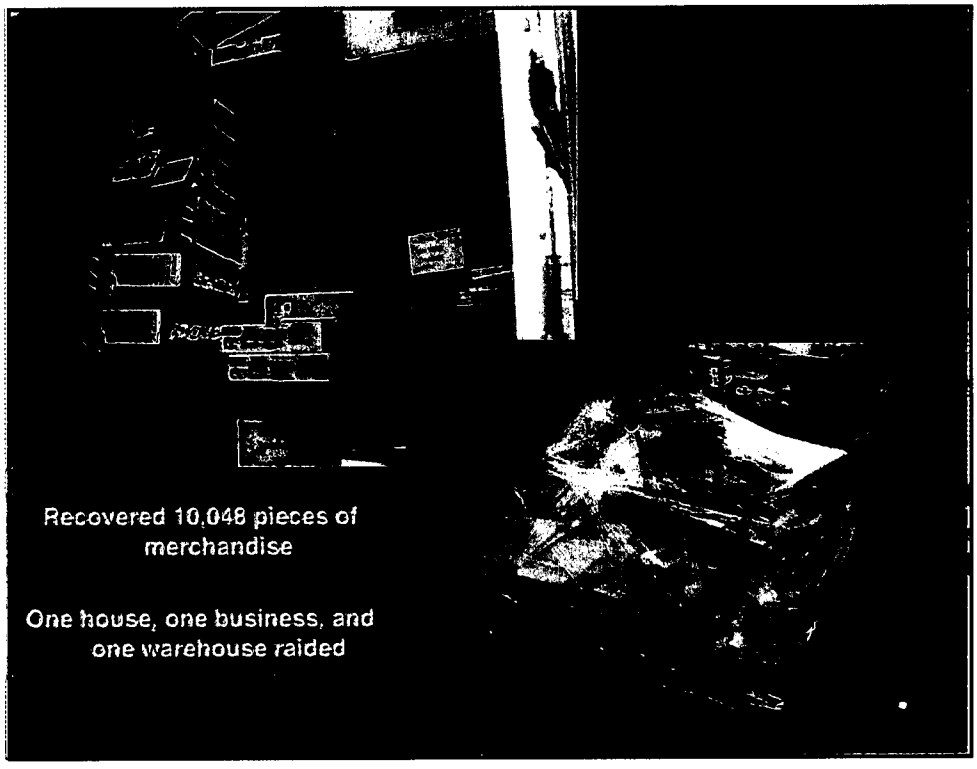
Welders already inside Air Stream Trailer

Box Stuffing

LOWE'S
Loss Prevention

Columbia, SC - Fencing Ring - Lowe's RS6000 with 2 terminals and 4 scan guns used to scan and inventory 2 trucks of seized property

Rubbermaid totes used to steal and store stolen product



Recovered 10,048 pieces of merchandise

One house, one business, and one warehouse raided

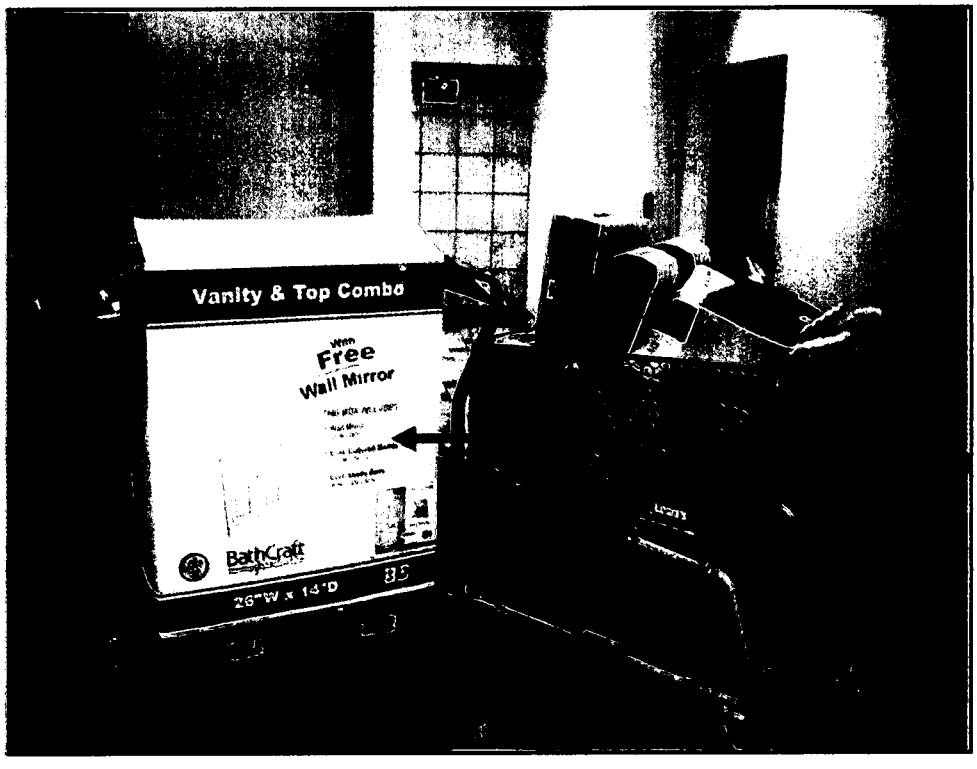
Authorities charge suspect in huge fencing operation

Cash, $250,000 of merchandise confiscated

Columbia, SC - Fencing Ring

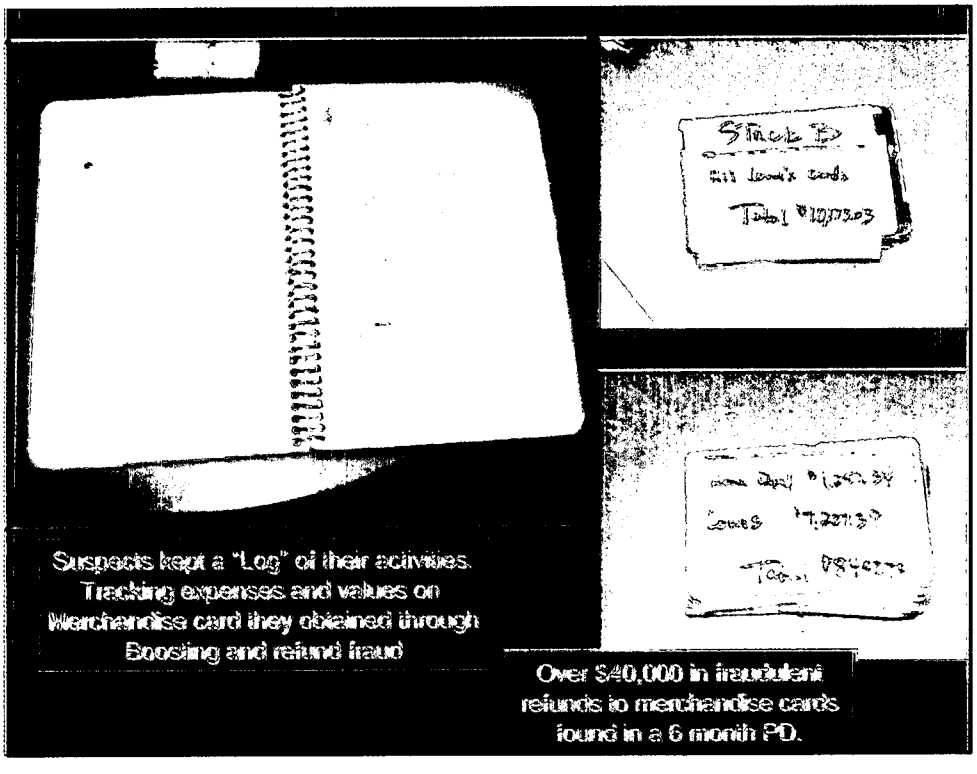
Cases of batteries and turbine vent boxes being unloaded from one of 2 trucks of seized merchandise. The batteries on this pallet alone have a retail value of over $7,000

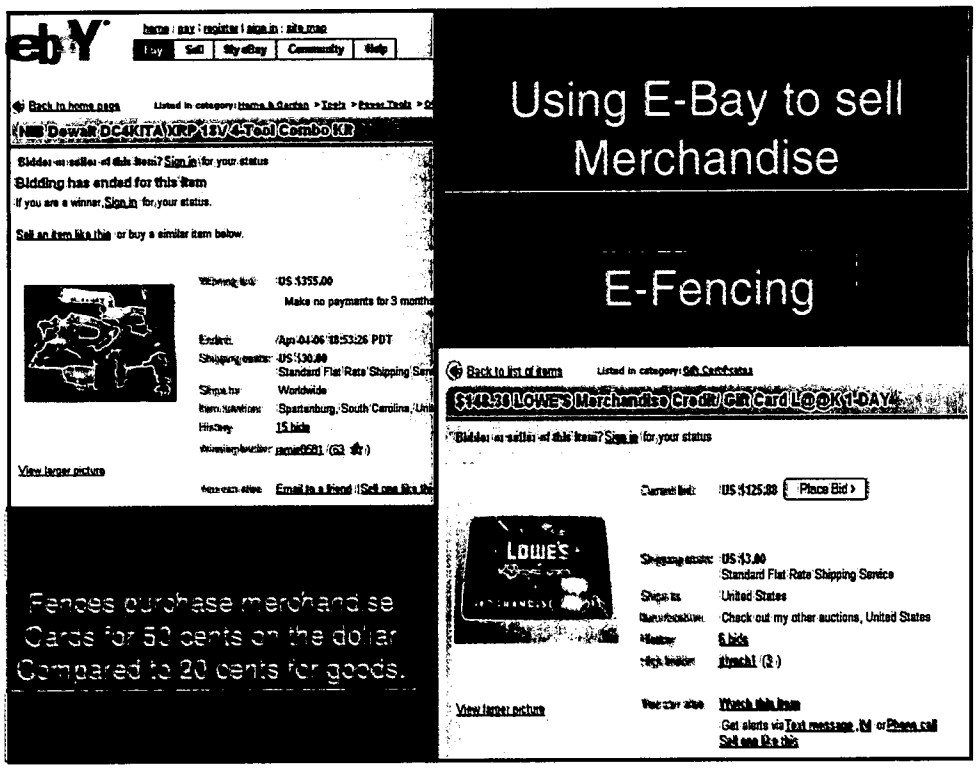
Box Stuffing Case

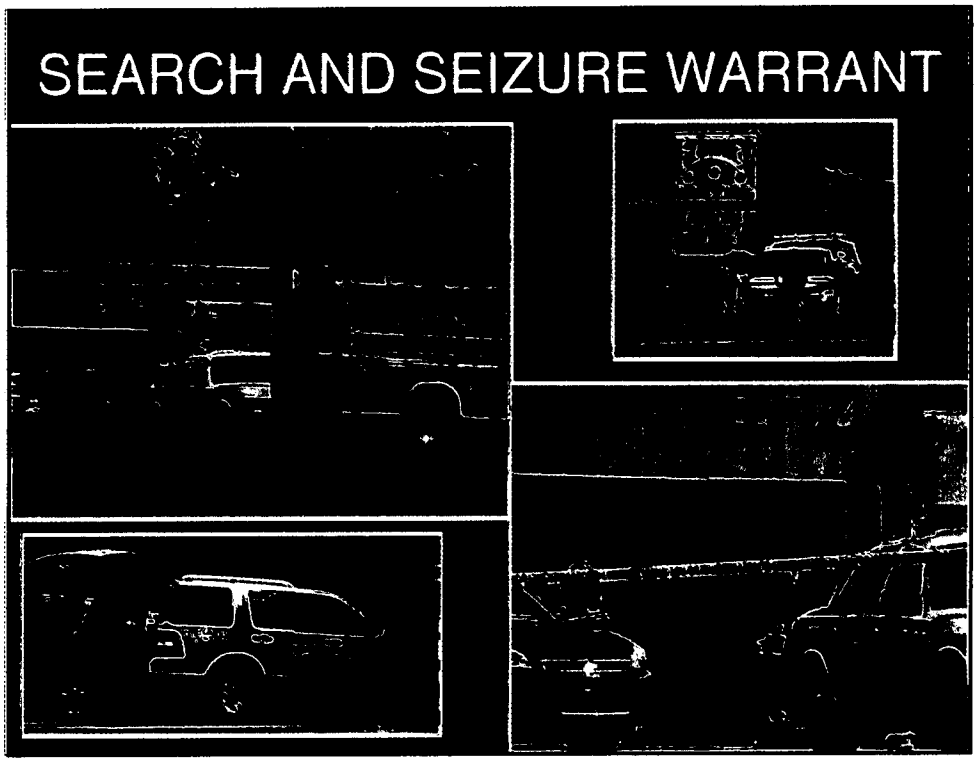

Vanity & Top Combo
With
Free
Wall Mirror
BathCraft
26"W x 14"D

Boosting and Fencing

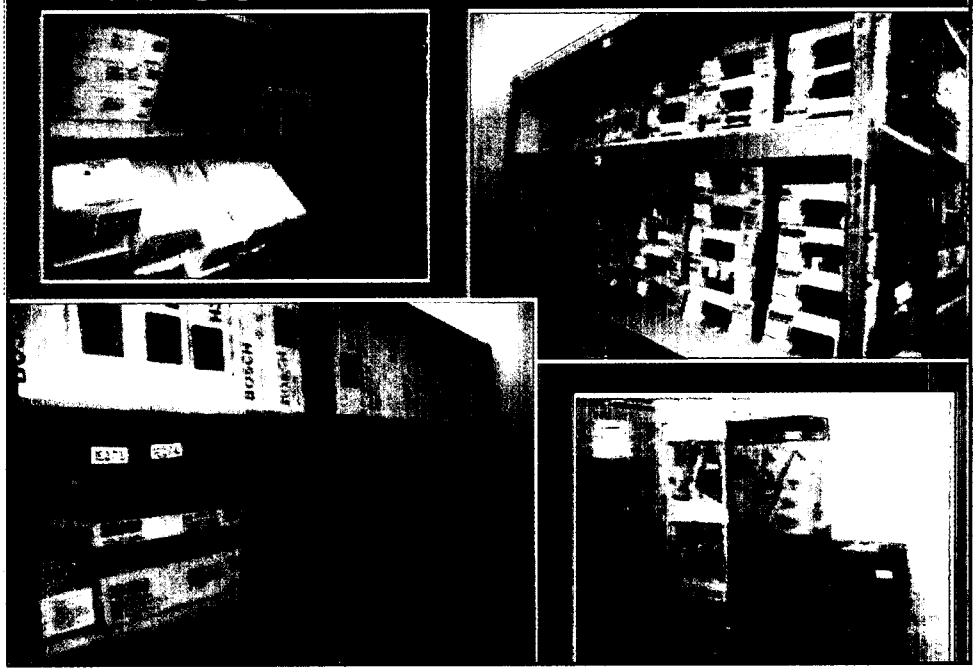
LOWE'S
Loss Prevention




Using E-Bay to sell Merchandise
E-Fencing
Fences purchase merchandise Cards for 50 cents on the dollar Compared to 20 cents for goods.


SEARCH AND SEIZURE WARRANT

RECOVERED MERCHANDISE



"Organized Retail Theft (ORT) is the most serious security issue facing many retail verticals including supermarkets, drug stores, mass merchandisers, apparel and accessory retailers and Do It Yourself (DIY) stores.

ORT is a crime that has grown over the past ten years almost unabated."

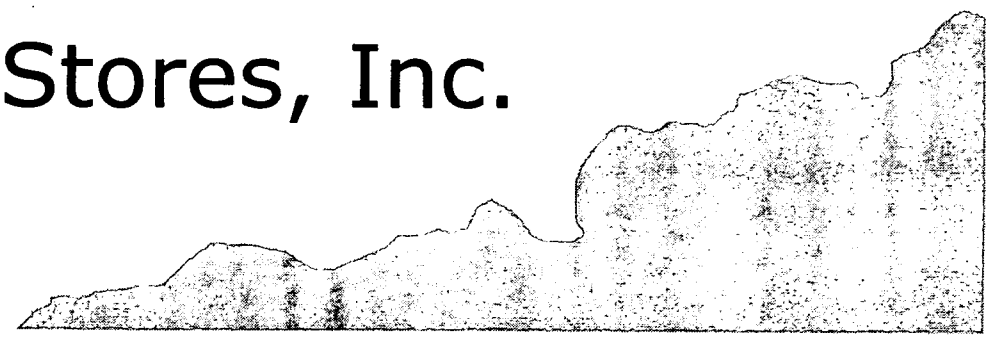
National Retail Federation
2006

LOWE'S
Loss Prevention

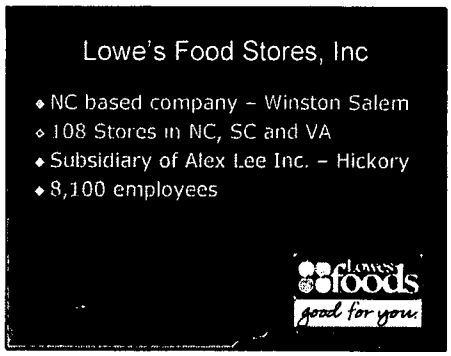
Organized Retail Theft

Lowes foods
good for you.

Moe McKnight
Director of Loss Prevention
Lowes Food Stores, Inc.



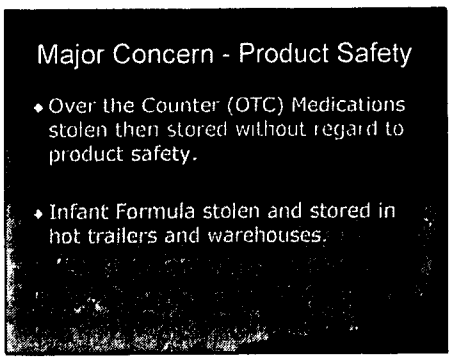
Slide 1



Slide 2

Slide 3

Slide 4



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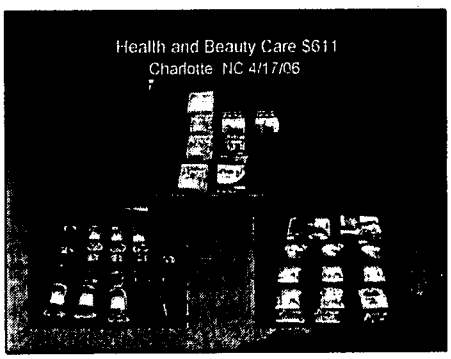

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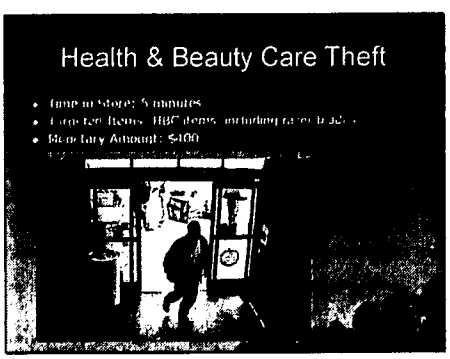
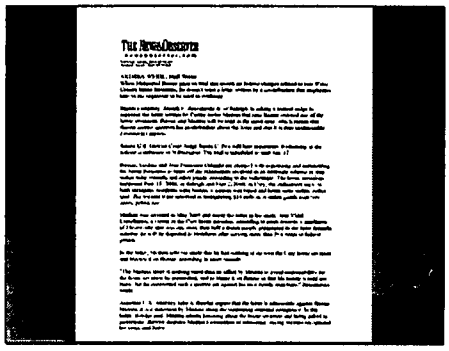


Slide 7

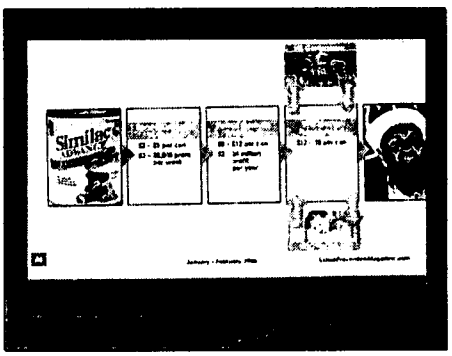
Slide 8



Slide 9

Slide 10

Slide 11



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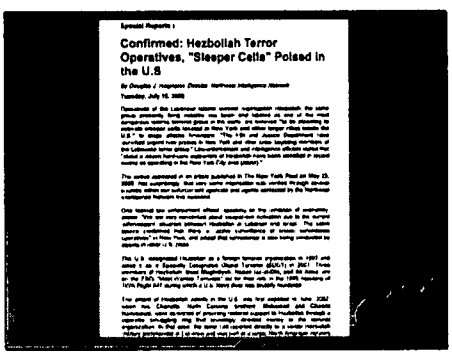
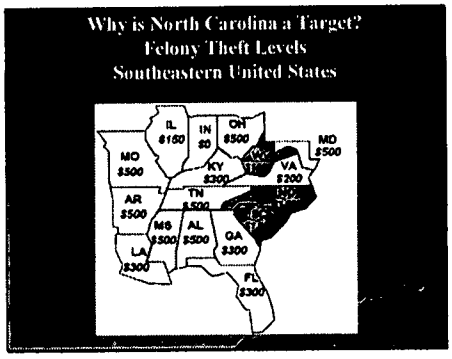
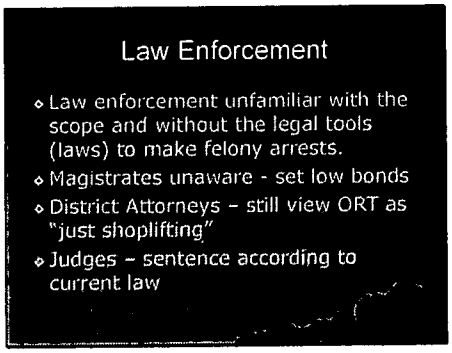


Confirmed: Hezbollah Terror Operatives, "Sleeper Cells" Poised in the U.S

Slide 13



Slide 14



USE OF RETAILER-PROVIDED PROPERTY FOR STING OPERATIONS

Background: Retailers often assist law enforcement by donating merchandise to be used in a sting operation. Police sell the merchandise as "stolen property" to "fences" or flea market operators. Unfortunately, because the merchandise is donated for purposes of the sting and is not actually stolen, district attorneys are unwilling to prosecute these crimes.

The legislative change proposed below would make it a crime to receive stolen goods even if they goods are not stolen as long as the purchaser reasonably thinks the goods are stolen.

§ 14-71. Receiving stolen goods.

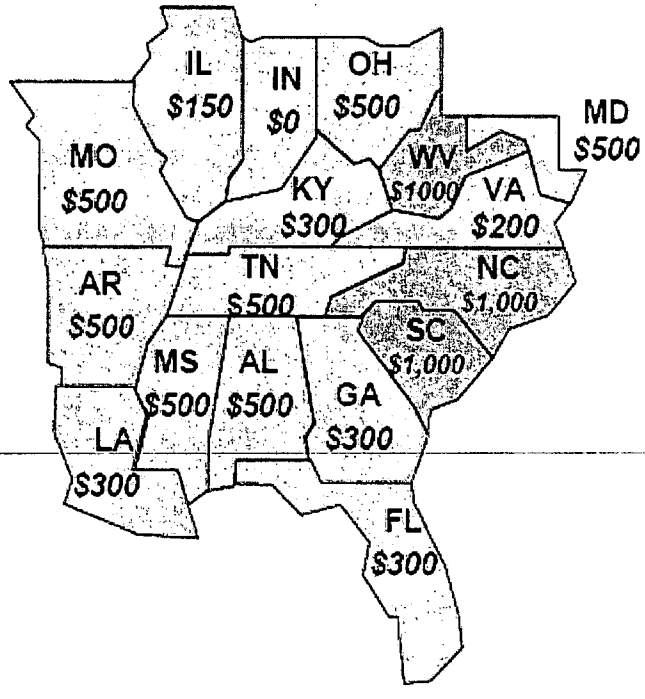
If any person shall receive any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken <u>whether or not the item has been feloniously stolen or taken</u>, he shall be guilty of a Class H felony, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such receiver ~~may be dealt with, indicted, tried and punished in the county where he actually received such~~ chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny.

REDUCING THE LARCENY THRESHOLD

Background: Under current North Carolina law, a person must steal in excess of one thousand dollars ($1,000) in order for the offense to constitute a felony. Most criminals know that if they steal $500 or $700 worth of merchandise that they will only commit a misdemeanor and therefore not receive any real punishment.

When you look at the states that are close to North Carolina, their thresholds are much lower. In Virginia, for example, any theft in excess of $200 is grand larceny, with a maximum penalty of 20 years. A third offense of petty larceny is by law in Virginia treated the same way as grand larceny. With the diligent enforcement activities, such measures are ordinarily adequate to—ordinary law enforcement activities are usually adequate to keep the problem of merchandising theft sufficiently in check. Lowering the threshold for felonious larceny from $1,000 to $500 would make NC less of an outlier.

Felony Theft Levels in the Southeastern US



Section 1. § 14-72. Larceny of property; receiving stolen goods or possessing stolen goods is amended to read:

(a) Larceny of goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) is a Class H felony. The receiving or possessing of stolen goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than ~~one thousand dollars ($1,000)~~ five hundred dollars (500.00), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.

SWITCHING OF BAR CODES ON PRODUCTS

Background: Criminals often use the newest technology to thwart the efforts of retailers to slow their activities down. One way this is currently being done is a criminal will buy a low-priced item (for example a drill) for $19.99. The criminal will then scan the UPC code and print stickers identifying this low priced item. The criminal then returns to the store and places the UPC code identifying the $19.99 item over the UPC code of another drill that costs $99.99. The sticker is then removed and the drill is either resold or returned for a credit of $99.99 in the form of the gift card. The gift card is then sold and the criminal pockets the $80 profit.

The proposed legislative change below would clarify North Carolina law to keep up with technology by making it a crime to switch both a bar code and a price tag.

Section 2. § 14-72.1. Concealment of merchandise in mercantile establishments is amended by adding a new subsection to read:

...

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag or other product code used to identify the sales prices and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection
Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

UTILIZING EXIT DOORS
TO FACILITATE SHOPLIFTING

Background: Federal Occupational Health and Safety Administration (OSHA) rules require retailers to provide emergency exit doors in their stores that must remain unlocked. Criminals are well-aware of this fact and rather than leaving through the front door, criminals are now utilizing exit doors to leave the store and jump into a vehicle waiting just outside the exit door.

This proposal would increase the penalty for larceny to a Class H felony if a person uses an exit door to leave the store with stolen property.

Section 2. § 14-72.1. Concealment of merchandise in mercantile establishments is amended by adding a new subsection to read:

....

(d2) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using an exit door erected and maintained to comply with the requirements of 29 CFR 1910 Subpart E to exit the premises of a store is guilty of a Class H felony.

REMOVAL OF SECURITY DEVICES

Background: Many retailers attach anti-shoplifting or inventory control devices to prevent shoplifters from leaving their store with merchandise. In addition, to utilizing lead-lined purses, professional shoplifters with premeditation often enter stores with tools that are used to remove, destroy or deactivate security devices.

The proposed legislative change below would create a new subsection that increases the penalty for using such deactivating such devices.

Section 2. § 14-72.1. Concealment of merchandise in mercantile establishments is amended by adding a new subsection to read:

....

(d3) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by removing, destroying or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

LARCENY OF INFANT FORMULA

Background: At $22 to $28 per can, infant formula has become one of the hottest items stolen from retailers and subsequently repackaged and resold. There are also strong ties between black-marketed infant formula and organized crime and terrorist groups.

Infant formula is a delicate product that is subject to strict packaging requirements of the manufacturers, the United States Food and Drug Administration and the North Carolina Department of Agriculture. Unfortunately, once stolen this product often becomes adulterated before it becomes resold – putting the consumers health and safety at risk.

> "In many cases, stolen infant formula, pharmaceuticals, and other consumables are not stored under proper conditions. When these items are reintroduced into the retail market, they can pose a significant health hazard to the consumer. The potential threat to the health and safety of unsuspecting consumers is most evident in cases in which infant formula is stolen, repackaged and then resold to both knowing and unknowing wholesalers, who then sell the infant formula to government food programs and discount stores."
>
> *-Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Testimony before the House Judiciary subcommittee on crime, terrorism and homeland security, March 17, 2005,*

> "The Coalition wishes to express its gratitude to both the Justice Department (DOJ) and the FBI for their hard work and dedication on the organized retail crime front as well as the outstanding efforts of state and local law enforcement.
>
> In particular, retailers and manufacturers are very pleased about the recent collaborative effort between federal and state law enforcement officials who have broken up a retail **theft ring operating in North Carolina** and Virginia that was responsible for moving more than **$2 million dollars worth of stolen infant formula** and **OTC products**.
>
> The Coalition views the apprehension of this theft ring as a very positive development, but more needs to be done because the problem is prevalent throughout the country and these theft rings are becoming more aggressive and violent in their behavior."
>
> *-Chris Nelson, Director of Asset Protection, Target Corporation,* Organized Retail Theft Testimony before the US House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, *Thursday, March 17, 200,* Statement on Behalf of the Coalition Against Organized Retail Theft

14-72.7 Theft of Infant Formula -

a) If any person shall take and carry away infant formula valued in excess of one hundred dollars ($100.00) that person shall be guilty of a Class H felony.

b) The term "infant formula" as used in this section shall have the same meaning as found in 21 U.S.C.§ 321(z)."

AGGREGATION OF THEFT AMOUNTS

Background: Organized Retail Theft (ORT) rings often work in a group using "shopping lists" to steal merchandise just below the felony threshold to avoid prosecution for a felony.

This proposed legislation would allow a district attorney to aggregate the dollar amount stolen over 180-day period if more than two people are involved and the amount of stolen merchandise exceeds $1,500.

§ 14-80.1 Definitions.

As used in this section:
(1) "Organized Retail Theft" means when two or more persons are involved in theft of retail property from a retail establishment, with value exceeding $1,500 aggregated over a 90-day period, with the intent to sell that retail property to a retail property fence for monetary or other gains.

(2) "Retail property" means any new article, product, commodity, item or component intended to be sold in retail commerce.

(3) "Value" means the retail value of the item as advertised by the affected retail establishment or establishments, to include all applicable taxes.

(4) "Retail property fence" means a person or business that buys retail property knowing or believing that property is stolen.

14-80.2 Organized Retail Theft

(a) A person who conspires with another person to being about the movement of retail property by taking possession of, carrying away or transferring or causing to be carried away, with the intent to steal any retail property with a total value exceeding one thousand five hundred dollars ($1,500) within any 180-day period and takes or causes that retail property to be moved in interstate commerce or placed in the control of a retail property fence in exchange for consideration shall be guilty of a Class G felony.

(b) Whoever receives or possesses with the intent to distribute, any property into interstate commerce which has been taken or stolen in violation of this section, shall be guilty of a Class G felony.

(c) It is not a defense to a charge of receiving stolen property in violation of this section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(d) Venue for criminal actions to enforce the provisions of Section 1 of this act, including criminal actions with respect to each of the offenses included within *Organized Retail Theft* as defined in Section 1 of this act, that have been committed, attempted or conspired to be committed by two or more persons, shall be in any county in which at least one criminal offense has occurred that constitutes part of the *Organized Retail Theft* offenses, it being the intent of this section that one state court may have jurisdiction over all the conduct, persons and property which are part of, or are directly related to, each and all of the criminal offenses forming part of the *Organized Retail Theft* offenses. It is discretionary, not mandatory, to bring all criminal actions in one jurisdiction when *Organized Retail Theft* offenses involve two or more counties.

(e) Whoever violates any provision of this section shall forfeit to the state any interest the person has acquired or maintained in violation of this section.

Organized Retail Theft

Shoplifting is no longer a petty, juvenile crime. Organized Retail Crime (ORC) rings are gangs of skilled, well-organized professionals who are highly mobile, moving from community to community stealing large amounts of merchandise from retailers.

There are varying estimates on the financial impact of ORC to retailers in the United States. The estimates range from $25 billion annually according to the National Retail Federation (NRF), $30 billion annually according to the Federal Bureau of Investigation's Interstate Task Force and $35 billion annually according to the Retail Industry Leaders Association (RILA).

Shoplifting case values have increased significantly with the rise of ORC. According to the 2004 National Retail Security Survey, conducted by the University of Florida's Department of Criminology, the average shoplifting case value more than doubled between 2003 and 2004. Based on the FBI's Uniform Crime Reporting (UCR) recorded shoplifting offences increased over 11 percent between 2000 and 2004.

ORC directly impacts state revenues in the form of lost tax revenue. RILA estimates that state sales tax revenues are reduced by $1 billion annually due to lost sales...an estimated $36 million in North Carolina.

- ORC rings typically target everyday household products that can be easily sold through fencing operations, flea markets, over the Internet and storefront operations. See the attached "shopping list."
- This type of criminal activity can put consumer's health and safety at risk. For example, consumers are potentially at risk when professional shoplifting rings steal consumable products, such as over-the-counter medications and infant formula and resell them to storefront operations.
- ORC groups are often involved in other illicit activities such as distribution of narcotics, money laundering and supporting overseas operations. Shoplifting results in higher prices for consumers, and significant lost tax revenue for state and local government.

Thank you for the opportunity to speak to you today on this important issue. Attached are several relevant articles on the various criminal and public safety issues affiliated with organized retail crime.

Andy Ellen
NC Retail Merchants Association
General Counsel

Bill Suthard
Lowe's Corporate Loss Prevention
Manager, Organized Retail Crime
Investigations

Scott Mason
Director, Public Affairs
Lowe's Companies, Inc.

Moe McKnight
Lowe's Food Stores, Inc.
Director, Loss Prevention

Bill Suthard
Lowe's Companies

Bill Suthard is the Corporate Manager of ORT Investigations for Lowe's Companies and is directly responsible for overseeing all ORT Investigations nationwide for Lowe's.

Bill is a Military Veteran with 3 yrs Law Enforcement experience and 10 yrs Retail Loss Prevention experience. Bill has served various positions ranging from Single Store Manager, to District Manager and Area Manager.

Bill has been assigned to several metro markets (Washington DC, NY and New Jersey) prior to his assignment at the Corporate office in Mooresville NC.

"Moe" McKnight
Lowe's Food Stores, Inc.

Moe McKnight is a Loss Prevention executive with over 28 years experience in the retail industry. Currently, Moe is the Loss Prevention Director for Lowe's Food Stores, Inc., a 100-store chain of supermarkets in North Carolina, Virginia and South Carolina.

Prior to joining Lowe's, Moe was the Director of Loss Prevention for Merchants Distributors, Inc. (MDI) which distributes food and non-food items to over 600 retail food stores in nine Southeastern states.

In addition to his exceptional accomplishments for his employers, Moe has served as an executive within a number of industry related trade organizations, such as:

- American Society for Industrial Security (Chapter Chairman)
- North Carolina Retail Merchants Association (Chairman)
- Retail Loss Prevention Association of the Carolinas (President)

Moe has also contributed to the welfare of North Carolina through his appointments and service on several governmental commissions and public health organizations:

- The Governor's Commission on Juvenile Crime
- North Carolina Sentencing and Policy Advisory Commission
- Governor's Institute - Board of Directors

A Thief's Top 20

Organized gangs of retail thieves favor goods that are moderately priced, but in high demand. Here are their favorites:

Advil tablets, 50 count

Advil tablets, 100 count

Aleve caplets, 100 count

EPT Pregnancy Test single

Gillette Sensor 10 count

Kodak 200 speed, 24 expsoures

Similac with iron powder -- case

Similac with iron powder -- single can

Preparation H 12 count

Primatene tablets, 24 count

Sudafed caplets, 24 count

Tylenol caplets, 100 count

Advil caplets, 100 count

Aleve caplets, 50 count

Correcountol tablets, 60 count

Excedrin tablets, 100 count

Gillette Sensor/Excel 10 count

Gillette Sensor 15 count

Monistat 3

Preparation H Ointment 1 ounce

Source: Food Marketing Institute

Organized Retail Crime: Estimated Lost Sale Tax Revenue by State

	All Retail Stores (2004)[i]	State Percentage of All Retail Store Sales (2004)	Estimated Amount of Merchandise ORC Gangs Stole by State	State Sales Tax Rates (2004)[ii]	Estimated Lost Sales Tax Revenue by State
United States	$3,522,753,961,000	---	$30,000,000,000[iii]	---	---
California	$428,851,298,000	12.17%	$3,651,000,000	6.25%	$228,187,500
Texas	$288,967,307,000	8.20%	$2,460,000,000	6.25%	$153,750,000
Florida	$209,354,732,000	5.94%	$1,782,000,000	6%	$106,920,000
New York	$205,164,950,000	5.82%	$1,746,000,000	4.25%	$74,205,000
Illinois	$144,754,914,000	4.11%	$1,233,000,000	6.25%	$77,062,500
Pennsylvania	$140,302,370,000	3.98%	$1,194,000,000	6%	$71,640,000
Ohio	$139,302,217,000	3.95%	$1,185,000,000	6%	$71,100,000
Michigan	$123,244,027,000	3.50%	$1,050,000,000	6%	$63,000,000
New Jersey	$116,146,739,000	3.30%	$990,000,000	6%	$59,400,000
Georgia	$103,516,064,000	2.94%	$882,000,000	4%	$35,280,000
North Carolina	**$94,048,844,000**	**2.67%**	**$801,000,000**	**4.50%**	**$36,045,000**
Virginia	$92,452,684,000	2.62%	$786,000,000	4%	$31,440,000
Massachusetts	$83,465,275,000	2.37%	$711,000,000	5%	$35,550,000
Washington	$74,935,339,000	2.13%	$639,000,000	6.50%	$41,535,000
Minnesota	$74,126,788,000	2.10%	$630,000,000	6.50%	$40,950,000
Tennessee	$73,919,527,000	2.10%	$630,000,000	7%	$44,100,000
Wisconsin	$74,043,627,000	2.10%	$630,000,000	5%	$31,500,000
Indiana	$72,222,232,000	2.05%	$615,000,000	6%	$36,900,000
Maryland	$69,072,232,000	1.96%	$588,000,000	5%	$29,400,000
Missouri	$68,686,660,000	1.95%	$585,000,000	4.23%	$24,716,250
Arizona	$67,908,702,000	1.93%	$579,000,000	5.60%	$32,424,000
Colorado	$61,285,050,000	1.74%	$522,000,000	2.90%	$15,138,000
Connecticut	$48,829,210,000	1.39%	$417,000,000	6%	$25,020,000
Louisiana	$47,384,624,000	1.35%	$405,000,000	4%	$16,200,000
Alabama	$45,858,614,000	1.30%	$390,000,000	4%	$15,600,000
South Carolina	$45,704,569,000	1.30%	$390,000,000	5%	$19,500,000
Kentucky	$41,325,797,000	1.17%	$351,000,000	6%	$21,060,000

Organized Retail Crime: Estimated Lost Sale Tax Revenue by State

	All Retail Stores (2004)[i]	State Percentage of All Retail Store Sales (2004)	Estimated Amount of Merchandise ORC Gangs Stole by State	State Sales Tax Rates (2004)[ii]	Estimated Lost Sales Tax Revenue by State
Oklahoma	$38,292,371,000	1.09%	$327,000,000	4.50%	$14,715,000
Iowa	$37,088,745,000	1.05%	$315,000,000	5%	$15,750,000
Kansas	$34,263,296,000	0.97%	$291,000,000	5.30%	$15,423,000
Nevada	$29,720,833,000	0.84%	$252,000,000	6.50%	$16,380,000
Arkansas	$28,925,532,000	0.82%	$246,000,000	6%	$14,760,000
Mississippi	$28,191,708,000	0.80%	$240,000,000	7%	$16,800,000
Utah	$27,309,774,000	0.78%	$234,000,000	4.75%	$11,115,000
Nebraska	$21,486,393,000	0.61%	$183,000,000	5.50%	$10,065,000
New Mexico	$20,858,626,000	0.59%	$177,000,000	5%	$8,850,000
Maine	$19,000,559,000	0.54%	$162,000,000	5%	$8,100,000
Idaho	$18,210,683,000	0.52%	$156,000,000	6%	$9,360,000
West Virginia	$18,125,574,000	0.51%	$153,000,000	6%	$9,180,000
South Dakota	$15,516,268,000	0.44%	$132,000,000	4%	$5,280,000
Hawaii	$14,259,850,000	0.40%	$120,000,000	4%	$4,800,000
Rhode Island	$10,989,537,000	0.31%	$93,000,000	7%	$6,510,000
North Dakota	$8,374,407,000	0.24%	$72,000,000	5%	$3,600,000
Vermont	$8,174,758,000	0.23%	$69,000,000	6%	$4,140,000
Wyoming	$7,109,023,000	0.20%	$60,000,000	4%	$2,400,000
District of Columbia	$2,783,257,000	0.07%	$21,000,000	5.75%	$1,207,500

Note: States with no state sales tax, AK, DE, MT, NH, and OR, were omitted.

[i] Market Statistics, a division of Claritas Inc., Arlington, VA, The Survey of Buying Power Data Service, "Retail Trade and Food Services--Sales by Type of Store and State," 2004, http://www.census.gov/compendia/statab/tables/07s1022.xls.

[ii] Federation of Tax Administrators, "Comparison of State and Local Retail Sales Taxes," July 2004, http://www.taxadmin.org/FTA/rate/sl_sales.pdf.

[iii] Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Testimony before the House Judiciary subcommittee on crime, terrorism and homeland security, March 17, 2005, http://commdocs.house.gov/committees/judiciary/hju20018.000/hju20018_0.HTM. Based on the estimate of $30 billion, retailers lost 0.85% of annual sales nationally to Organized Retail Crime. State estimates were calculated based on the 0.85% figure.

Concord police nab multi-state shoplifters

Monday, March 5, 2007
By DIANA RUGG / WCNC

Concord Police have arrested six people they say went on a **multi-state shoplifting spree** – hitting only Wal-Mart stores. And police say they committed their crimes right out in the open.

Concord police said they found almost **$11,000 of goods** from at least twelve Wal-Mart stores in the suspects' truck. "They were going in and out of the store," said Sgt. Deckster Barlowe of Concord Police Department. "Stealing large items, such as computers, vacuum cleaners, putting them right in their buggies and walking right out the front door."

If they were stopped, sometimes they would even have a receipt.

"They would buy an item such as a computer," said Barlowe, "then go to another Wal-Mart and go steal that, another computer exactly like that, and walk out with that receipt in case they would be stopped."

What's more, police believe the suspects did it almost a dozen times before. "Evidence shows they've been doing it for the past month or so, hitting several Wal-Marts in Tennessee and **North Carolina**," said Barlowe.

Barlowe said Friday night Concord police got a tip from Wal-Mart loss prevention officers that six people were loading unpaid merchandise into a rental truck in the parking lot. Eight officers surrounded the store until it looked like the crew was done loading. Then they swooped in and made their arrests.

The suspects include Anthony Santillo, 39, his wife Virginia Santillo, 38, and their son, Anthony Santillo, Jr., 18. Police also arrested two other teenagers – Morgan Harris, 18, and Jacob Maples, 19 -- and Anthony LaMonica, 50, who was also wanted on a previous warrant. All the suspects live in Martinsville, Virginia. They are now in Cabarrus County Jail, each under at least $100,000 bond.

Concord police said they found almost $11,000 of goods from at least 12 Wal-Mart stores in the suspects' truck. Barlowe said the suspects hit stores in Knoxville, Jefferson City, Morristown, Greenville, Johnson City, Kingsport, and Bristol, Tennessee; as well as **Greensboro, Lexington, Kannapolis, and Salisbury, North Carolina**. Suspects also had a map pointing out the locations of several Charlotte Wal-Mart stores.

Shoppers like Bernard Glover call the suspects' boldness "simply amazing," and say the result is higher prices for honest customers like him.

"It seems as if in today's society everyone wants to take something for nothing," said Glover, "and they don't understand it has an effect on consumers who are trying to do the right thing."

Organized shoplifting rings prey on stores

Out-of-state gangs strike quickly and leave, police, retailers say

By ERIC RUTH, The News Journal
Posted Friday, March 2, 2007

In Delaware and across the country, organized groups of retail thieves have transformed the nickel-and-dime crime of shoplifting to a **skilled profession**.

They strike stores with methodical precision, sweep shelves of goods into detection-proof bags, then race out in pursuit of their next hit.

"It's no longer the teenager trying to pick up lip gloss," said Christina Showalter, the deputy attorney general in charge of the felony trial unit for New Castle County. "It can be very profitable."

Estimates of organized retail theft losses in the United States range from $15 billion to $37 billion a year, and a **hardworking thief can reportedly earn up to $5,000 a week** -- at 30 cents on each dollar of an item's value. The problem is growing in Delaware, too, although the crime is not tracked, Showalter and others said.

For retailers and customers, such an enormously successful criminal enterprise means leaner profits, higher prices. But even as police and retailers in Delaware work to battle the threat -- by putting theft-prone goods into safer places or by rooting out thieves -- **current laws seem ill-equipped to handle the problem**, retailers and law enforcement officials said. There's a mind-set that store thefts are petty crimes, experts say, and occasionally there are some problems getting full cooperation from victims. Retailers say that's been changing in Delaware.

In a state with hundreds of stores and easy interstate access, just two troopers are assigned to the problem full time, mainly in the Concord Pike corridor.

Thieves know the **potential for profit far outweighs the risks**. By focusing on such moderately priced, easily resold goods as baby formula, razors and cold medicine, careful thieves can **avoid getting caught with enough items to surpass the $1,000 felony threshold in Delaware,** retailers say. "They slap your hand, and you get out," said Richard Kenny, co-owner of Delaware's ShopRite Supermarket chain. "**This isn't shoplifting. This is organized crime.**"

Shopping lists

Working in groups of two or three, the boosters can hit several stores a day, up and down the state. "They come in from out of state; they make their hits in Delaware and move on," said Julie Miro Wenger, director of the Delaware Food Industry Council.

Often, they come with their own "**shopping list**," ready to steal what has been requested by the fences -- or even by their neighbors. The prized goods include mundane but potentially profitable household items such as pain relievers, pregnancy tests and hemorrhoid cream.

Baby formula is particularly coveted -- "gold in a can" is what some retailers call it. Fairly expensive and constantly in demand, black-market formula is prized by dishonest retailers, who pay the fence $8 a can, give it to low-income customers who are in federal assistance programs, then get reimbursed $16 by the government.

A well-organized team of thieves can haul in $10,000 to $20,000 worth of goods a day, said Jerry Biggs, organized retail crime division coordinator for Walgreen, the national drugstore chain that owns the Delaware Happy Harry's stores.

"The rings are highly structured, having well-trained shoplifters, several levels of criminal fences and far-reaching distribution systems that may involve businesses both legitimate and illegitimate in a half-dozen or more states," the National Retail Federation warned in its 2005 report on the problem. "The products may be sold in stores the fence owns, usually convenience stores or small grocery stores in the inner city."

Using nonstandard uniforms and cars to avoid being spotted, the Retail Theft Unit in northern New Castle County must continually adjust tactics to keep pace with an evolving repertoire of tricks. **Some thieves infiltrate the store's staff itself, working as cashiers to allow conspirators to stuff extra items in their bags at checkout -- a practice called "free-bagging." Others use foil-lined "booster bags" that literally foil the electronic anti-theft sensors attached to items; some simply bring pliers to pry off the tags.**

A 2006 National Retail Federation study found **81 percent of retail loss-prevention managers said their stores have been victims of organized theft**, and almost half said it is on the rise.

"Every time you come up with a new policy, these organized guys are coming up with a way to circumvent it," said Cpl. Bill Murray, who with Cpl. Brian Mulvena makes up the Retail Theft Unit.

More cooperation

Police say they need retailers' help. "Law enforcement for years did not get the cooperation they needed to pursue these individuals," Biggs said.

The retailer survey found that 59 percent of loss-prevention executives believed their top managers did not understand the seriousness of the issue. Smaller stores may not have the resources to pursue a case in court, or the commitment to ensure security officers show up to testify, Showalter said.

North of Wilmington, Murray said, cooperation between retailers and police has improved response times and brought a good record of apprehensions, though data on convictions are not tracked by the Attorney General's Office. Those on-the-spot arrests can be the toughest, Showalter said. "They usually have a getaway car parked nearby with an obliterated or stolen license plate. ... They work very quickly, and are ready to flee very quickly."

Alert store staffers can help, experts said. Stores also are looking toward technical solutions, from video systems programmed to "spot" suspicious activity to sensors that can defeat the booster bags.

But store precautions and staffers' reactions can create risks, and bring inconveniences. The more stores that install such devices as theft-resistant displays, the more frustrations for shoppers, retailers say. Today's organized thieves are also more likely to resort to violence if confronted, Showalter said, noting an increase in suspects who carry knives or guns. "We know our employees at the store level and the customers are at risk," said Ty Kelley, director of government relations for the national Food Marketing Institute.

Murray said the thieves are professionals. Only 30 percent to 40 percent are funding drug habits, he said. "The bulk of the people we arrest, they aren't on drugs," he said. "This is what they do."

Solutions proposed

Some retailers in Delaware and across the country have been pushing for tougher laws. Last year in New Jersey, organized theft was codified as a separate offense, and in Colorado, second-hand sellers such as flea-market vendors were forced to have proof of ownership for some items. The Delaware Food Industry Council wants the General Assembly to make it easier to charge suspects as felons.

New laws could make it easier to use a thief's accumulated haul to prove intent to resell, said ShopRite's Kenny, who joined the effort to have legislation introduced this year. State police are working with the Attorney General's Office to craft tougher penalties, but Showalter doubts they are needed. "All types of theft can be dealt with reasonably by the codes we have now," she said.

Since many thieves come from out of state, it's also harder for investigators to crack the rings locally. "These people are very transient," said Murray, who has seen suspects come from as far away as California. "The problem needs to be resolved through a new federal law to make it a federal felony," said Kelley of the Food Marketing Institute.

In the meantime, local retailers aren't waiting for government to act. The Delaware Retail Association and the Delaware Food Industry Council have recently created a partnership and will be meeting with state police next month to discuss options. Nationally, retailers are building a database to better track patterns of thefts. "We appreciate their alarm, and it's not misplaced," Showalter said. "The problem is growing."

High-tech scams take shoplifting to new level

October 26, 2006
By Ann Zimmerman
THE WALL STREET JOURNAL

William Swanberg had a thing for Legos, but it was hardly child's play. After he was arrested last November near Portland, Ore., police investigators determined he had stolen **more than $600,000** of the toys over **three years** from stores in at least **five states**.

He pilfered the toys by creating **counterfeit bar codes** that caused $100 Lego sets, for example, to be rung up for just $19. Then he resold them on a Web site for toy collectors.

Just as **technology** has given a big boost to the retail industry, making it more efficient and productive, it has also **transformed retail crime**. Using sophisticated tactics such as **bar-code forgery and fraudulent gift cards**, criminals are **stealing larger amounts**, and it has gotten harder to catch them.

Law-enforcement officers say many of the high-tech thieves belong to **organized-crime rings that have turned retail theft into big business**. And the Internet has made it easier for them to find buyers for the loot. "With these new methods, it can take a long time for a retailer to know he's suffered a large-scale theft, so it takes so much longer to catch up with thieves," said Jeff Lesowski, a senior deputy district attorney in Washington County, Ore., who prosecuted Swanberg.

Retail crime rose to about $37 billion in 2005 from $31 billion in 2003, according to a study conducted by the University of Florida, increasing almost twice as fast as retail sales over that period. Store employees, who have access to merchandise and familiarity with antitheft systems, account for 48 percent of retail-crime losses, according to the 2005 study. But professional thieves also are responsible for a big part, said Joseph LaRocca, vice president of loss prevention at the National Retail Federation, a trade group.

The value of merchandise snatched in the average shoplifting incident has more than tripled to $855 in 2005, from $265 in 2003, the University of Florida survey reported. The average loss in cases of organized retail crime – where the thieves intend to sell the stolen goods rather than keep them – was $46,353 in 2005, the survey said.

In the late 1990s, there was a rise in cases of criminal groups paying thieves to shoplift baby formula, razor blades, teeth whiteners and other high-volume merchandise, according to retailers and law-enforcement officials. The crime rings typically sold the loot to other stores or moved it in flea markets or pawn shops. Some even set up their own convenience stores.

Today's schemes generally involve more expensive items: $300 vacuum cleaners, $400 power saws and $1,000 plasma televisions.

Brad Brekke, vice president of assets protection at Target Corp., has been trying to persuade manufacturers to print prices on boxes or come up with bar codes in assorted sizes, which would be trickier to substitute. In the meantime, Target's loss investigators have begun to monitor sales reports for unusual patterns, trends and anomalies.

In the summer of 2005, they noticed spikes in sales of Legos. Expensive sets were being sold for a pittance. They studied hundreds of hours of surveillance tape, then devised an electronic system to alert store antitheft workers when big batches of Legos were rung up.

That's what happened last Nov. 17 at a Target in Hillsboro, Ore., but the security guard got the message too late. The guard warned co-workers at nearby stores. Later that day, an employee at a Beaverton, Ore., Target spotted Swanberg loading his cart with about **10 $100 Star Wars Millennium Falcon Lego sets**. He **slapped a phony bar code for a $19 Lego set on the top box** and **headed for the youngest-looking cashier** he could find, the prosecutor said. The **cashier scanned the top box and multiplied it by the number in the stack**.

Several Target employees surrounded Swanberg's cart, which he shoved at them in an effort to get away. They tackled him and summoned the police.

In his van was a detailed daily itinerary for Target, Wal-Mart and Toys "R" Us stores he planned to hit, the prosecutor said. Swanberg pleaded guilty in June to three counts of felony theft and was sentenced to 13 months in prison.

Scams with gift cards

Another vexing new problem, retail executives say, is gift-card fraud. The cards, which resemble credit cards, have been a boon to the retail industry, accounting for $60 billion in sales last year, almost one-third of it during the holiday season.

But they've also been a boon to thieves. In one scam, **crooks copy numbers from gift cards hanging on store racks, figure out which cards have been activated and use them to shop online**, said Dan Doyle, vice president of loss prevention at Beall's Inc., a department-store chain in the Southeast.

Another swindle involves **stealing merchandise, then returning it for store credit in the form of gift cards**. In 2003, Herion Karbunara, a Massachusetts man in his mid-20s, paid women $50 to $200 a day to shoplift merchandise from stores ranging from Pottery Barn to Victoria's Secret and then return it for gift cards, according to the Massachusetts attorney general's office.

The Internet has emerged as a preferred method for crooks like Karbunara to unload gift cards. After fraudulently obtaining about 600 such cards, Karbunara offered them for **sale on eBay**. The Massachusetts Attorney General's Office said **online sales netted Karbunara $200,000 over 10 months.** In late 2004, he pleaded guilty to three counts of larceny and one count of forgery, and was sentenced to two years in state prison.

Retailers responding to a National Retail Federation survey last year estimated that 70 percent of gift cards sold on eBay were fraudulently obtained, either through scams like Karbunara's or purchased with stolen credit cards. LaRocca, the federation's loss-prevention chief, said the group raised a "big stink" with eBay, which eventually changed its policy. EBay now limits sellers to posting one gift card per week, with a value of no more than $500.

Hani Durzy, an eBay spokesman, said the company changed its policy in an effort to thwart criminals. Listings are policed by eBay investigators, he said, and its 203 million users also alert the company to potential violations. With upward of 100 million items for sale on eBay at any given time, and 7 million items added every day, staying on top of every listing is difficult, he said.

More profit on Internet

The Internet has become so popular for moving stolen goods that a term has been coined for the practice – "efencing." Thieves or fences who sell loot out of a truck or at a flea market typically get 20 to 30 cents per dollar of retail value, according to a 2005 report on organized retail crime commissioned by the National Retail Federation. On the Internet, where their wares are exposed to many more potential buyers, they bring in, on average, 70 cents on the dollar, the report said.

"Thieves know this sort of organized retail crime is low-risk and high-profit," said Eric Ives, unit chief the FBI's major theft unit, which oversees investigations of organized retail crime.

After Swanberg, the Lego thief, was arrested, federal authorities raided the Reno home he shared with his elderly mother. Investigators found computer records of sales he had made on Bricklink.com, a Web site for Lego fans and collectors.

"Our Web site cannot do anything to prevent (the sale of stolen merchandise) from happening because we don't have control over the seller's merchandise," a representative of Bricklink.com said in an e-mail.

Laura and Bruce Wasz, a mother-and-son team, ran an 11-person theft ring in Illinois. They paid people to hit home-improvement chains such as Home Depot Inc. and Sears Holdings Corp.'s the Great Indoors. The thieves stole the old-fashioned way, simply sneaking things out the doors. Accomplices ripped off entire truckloads of products such as chain saws.

They unloaded it on eBay, using numerous different account names, according to Brian Hayes, an assistant U.S. attorney for the Northern District of Illinois. "They held themselves out as honest dealers," Hayes said. Investigators later determined that in 2003 they sold more than $2 million of sump pumps, faucets, mosquito exterminators, snow blowers and other merchandise.

They got caught after the manufacturer of the chain saws noticed a bunch of them for sale on the Web, priced below wholesale. Bruce Wasz was sentenced to six years, nine months in federal prison. His mother got five years, eight months.

Shoplifting is usually prosecuted on the state level. In most states, only those caught stealing more than $1,000 face felony charges that require jail time.

"**Organized retail-crime rings utilize the laws to their benefit**," said Britt Wood, senior vice president of industry relations at the Retail Industry Leaders Association. "**They don't steal a lot from one store at one time. But it adds up, so by the end of the month, they've stolen $100,000.**"

Retailers are pushing states to stiffen penalties. In January, Congress allotted $5 million for the FBI to establish an organized retail-crime task force.

Is black-market baby formula financing terror?

June 29, 2005

Mark Clayton, The Christian Science Monitor

On the day terrorists destroyed the World Trade Center, a Texas state trooper pulled over a rental van driven by a Middle Eastern man toward Houston. Opening the cargo door, the officer found a huge load of ... baby formula.

False alarm? Not really. Police later identified the driver as a member of a terrorist group and linked him to a nationwide theft ring that specialized in reselling stolen infant formula, says Sgt. Johnnie Jezierski of the Special Crimes Service of the Texas Department of Public Safety. Proceeds were wired to the Middle East. The driver is still under investigation.

Operation Blackbird, as Texas investigators dubbed their multistate baby-formula investigation, has since led to felony charges against more than 40 suspects, about half illegal immigrants. Authorities have seized some $2.7 million in stolen assets, including $1 million worth of formula.

Blackbird was just the beginning. In the nearly four years since 9/11, police have uncovered and dismantled a growing number of regional and national theft rings specializing in shoplifted infant formula, over-the-counter medicines, and personal-care products. At least eight of the major baby-formula cases have involved "fences" who are of Middle Eastern descent or who have ties to that region, according to a Monitor review of congressional testimony, news accounts, and a study by the National Retail Federation released Tuesday.

The Federal Bureau of Investigation has traced money from these infant-formula traffickers back to nations where terrorist groups, such as Hamas and Hizbullah, are active, investigators say. Then, the trail usually goes cold. Once funds enter such countries, there's often no way to track them.

FBI Director Robert Mueller first talked of a possible link in a speech last fall. He did it again in testimony before the Senate Committee on Intelligence in February, saying: "Middle Eastern criminal enterprises involved in the organized theft and resale of infant formula pose not only an economic threat, but a public health threat to infants, and a potential source of material support to a terrorist organization."

So far, most officials are unwilling to draw conclusive links between proceeds from shoplifted formula and terror financing, saying only that they're "likely" or "probable" in some cases.

"Just because you have an infant- formula operation doesn't mean it's a terror funding operation," says Sergeant Jezierski. "But to say there's no terrorist funding isn't the case either."

While many terrorist groups eschew criminal commerce because it tends to attract police attention, other groups finance themselves with theft, fraud, and smuggling. The Irish Republican Army, Colombia's FARC, and Hizbullah all have engaged in criminal enterprises, says Matthew Levitt, a former FBI counterterrorism analyst, now director of terrorism studies at the Washington Institute for Near East Policy.

Some Al Qaeda cells, mostly at the fringes of their operations, have engaged in criminal self-financing, he says. "Important operational funding can come from these criminal activities.... If you are funding yourself, it's freeing up the home organization."

Less convinced is Mardi Mountford, executive director of the International Formula Council, an Atlanta-based trade association that represents infant formula manufacturers in the United States. "We've heard that speculation, but we're not aware of a direct connection."

Theft of baby formula from store shelves has risen over the past decade, costing retailers billions of dollars. Formula was the fourth most-often-shoplifted item last year, according to a survey by the Food Marketing Institute, a Washington, D.C., trade group.

In the wake of **several cases in North Carolina** and Florida, some retailers have transferred formula from store shelves to behind the counter. One big grocery chain, Albertsons Inc., now keeps a few cans on the shelf - along with a sign directing customers to the courtesy counter.

Calling it "a serious security issue" for retailers, the National Retail Federation unveiled its 200-page report highlighting "organized retail theft" of infant formula. At least seven of the report's 10 case studies detail fencing operations run by citizens of Middle Eastern origin.

"The rings I identified dealing in stolen infant formula are operated mostly by Middle Easterners," says Charles Miller, a loss-prevention consultant and author of the report. They typically organize the rings, pay the shoplifters (who are mostly from Latin America), repackage the formula, and resell it. Out of $30 billion in annual retail theft, about $7 billion of infant formula is stolen and resold for a tidy profit, Mr. Miller estimates.

The scheme works this way: A shoplifter may get $5 for a can of formula from his fence, who then reboxes the loot and sells that to a dishonest retailer for $9 a can. That retailer then sells it for perhaps $15 or $16 a can. The result may be a $6 or $7 profit a can for the dishonest retailer - instead of pennies a can for the honest merchant, Miller says.

Several Middle Eastern businessmen have already been charged or convicted in connection with baby-formula thefts. Mohammed Khalil Ghali was sentenced in February to 14 years in prison, convicted on 15 counts that included transporting stolen goods and money laundering. A search warrant states that money generated from the sale of the goods was wired to banks in the Middle East, "specifically Jordan, Egypt, and Palestine." Nine of the 11 individuals indicted in the case are of Middle Eastern descent, according to the Department of Homeland Security.

Samih Fadl Jamal was a fixture in Phoenix, until investigators discovered that his company gained $11 million in profits from the sale of $22 million of stolen baby formula from 2001 to 2003, prosecutors say.

In all, 27 people connected to the Jamal Trading company scheme were indicted, most from Iraq, Jordan, or Lebanon. Some are naturalized US citizens; others overstayed student or visitor visas, the National Retail Federation report said. Investigators' wiretaps indicated that about $8 million was funneled to countries in the Middle East, where it disappeared. Mr. Jamal, a naturalized US citizen born in Lebanon, was convicted in April of 20 counts of conspiracy to transport and receive stolen property and other related charges, as well as money laundering.

Of course, just because the money goes to the Middle East doesn't mean it's going to terrorists, some groups point out.

"To say that - 'Oh, there's a chance that these funds went to fund terrorism because there are terrorist groups active in this country' - is irresponsible," says Rabia Ahmed of the Council on American-Islamic Relations in Washington. "We've seen many cases like this, where a prominent Muslim leader has been charged with horrible things, but it ends up being some kind of immigration technicality."

First identified in the early 1980s, organized retail theft is a key feature of baby-formula theft. Teams of professional shoplifters may travel 200 to 300 miles over a week or more, Miller says. Typically each has a shoplifting list of specific brands of infant formula, medications, shaving products, and batteries given them by their fences.

Shoplifting teams may involve five or six women or young men. Typically they disperse into a store in pairs or separately, posting lookouts to watch for store security. Then a separate team loads carts of formula and goes straight to the exit where a vehicle is waiting, investigators say.

Formula is a favorite of theft rings mostly because of the steady demand, high cost, and large profit margins. Its price is also supported by the US Department of Agriculture's $4.9 billion Women, Infants and Children (WIC) program.

To battle this trend, Texas authorities mandated that retailers participating in WIC must purchase their infant formula from approved WIC wholesalers or the manufacturers themselves. US Rep. John Carter (R) of Texas sponsored legislation included in the WIC Reauthorization Act of 2004 that aims to eliminate the market for stolen infant formula with a similar mandate. But those measures have not been implemented in most states.

As of May, the USDA has mandated that stores nationwide use a licensed wholesaler, say Oklahoma officials, where a recent burst of formula shoplifting has drawn attention even though Oklahoma is one of the few states that require stores to buy from a licensed wholesaler.

A key problem is that many local law enforcement officers view baby- formula theft as petty shoplifting - and shoplifting laws tend to be soft, experts say. Few shoplifters go to jail.

But there are signs that that attitude is changing. The Retail Industry Leaders Association in March testified before Congress, asking for tougher laws to crack down on organized shoplifting. Major retailers like Wal-Mart, Kroger, Walgreens, and others reported to be losing millions on shoplifted baby-formula have internal teams focused on the problem.

Although the FBI has also deployed teams nationwide to crack down on organized retail theft, some investigators say the problem is growing - and moving onto the Internet. On Monday, the online auction house eBay carried more than 1,000 offers of Enfamil baby formula. "This problem is getting worse, no question," Miller says. "It is in every state in the union, and neither law enforcement nor the retailers have their arms around it."

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Powdered baby formula goes behind the counter

Many supermarkets locking up infant products amid rising thefts

June 4, 2005

The Associated Press

BETHLEHEM, Pa. - Shoppers with little children might have noticed a change at the supermarket recently: The powdered baby formula has been locked up.

The high-priced item has long been an attractive target for shoplifters, who typically resell it on the black market at a reduced price or use it to cut drugs.

Now, some supermarkets are fighting back, putting formula under lock and key just as they did with cigarettes many years ago.

"There is a point in time when you have to protect your assets," said Ted Seal, general manager of a Super Fresh store near Bethlehem that locked up its supply about a month ago because thieves had been stealing it by the caseload. Customers who want powdered formula now must ask a manager to unlock a case near the front.

$10 to $30 per can

At Albertson's Inc., one of the nation's largest supermarket chains, with more than 2,500 stores in 37 states, stores often keep a very small quantity on shelves, with signs directing customers to the service counter if they want more.

"It has been a problem for a number of years. People steal baby formula, take it to another store and return it" for cash, said Albertson's spokesman Walt Rubel.

The Food Marketing Institute, an industry group that maintains a list of the 50 most stolen items from supermarkets, said that cases of Similac-brand powdered formula ranked No. 7 and individual cans of Similac followed at No. 8.

Powdered formula typically costs $10 to $30 a can, depending on size and brand, and $75 and up for a case.

In Tennessee, authorities made two traffic stops along interstate highways within the past year that netted more than 4,500 cans of stolen Similac and Enfamil powdered formula.

In North Carolina, seven Honduran immigrants were arrested last year for conspiring to steal and resell more than $14 million worth of baby formula and over-the-counter drugs. In April, they were given sentences ranging from probation to 12 years in prison and ordered deported.

Stolen formula linked to terrorism

FBI Director Robert Mueller has even linked stolen baby formula to terrorism, saying proceeds from black market sales have been used to support organizations such as Hamas and Hezbollah.

Millions of dollars' worth of powdered formula is stolen every year, said Mardi Mountford, executive director for the International Formula Council, an association of infant formula manufacturers.

Sometimes the formula winds up on the gray market, in which shoplifters sell it at a discount to unauthorized distributors, which in turn sell it to small stores or at flea markets, she said.

Putting formula under lock and key "probably is a good deterrent, but it doesn't make the consumers very happy because it costs them extra time," Mountford said.

Weis Markets, which operates 156 stores in Pennsylvania and five surrounding states, said it employs a variety of methods to deter theft, including placing the formula section under video surveillance, teaching employees what to look out for and placing cases behind the cash registers.

"We recognize it is an inconvenience to our customers, but it is designed to prevent theft and if you are preventing theft, you are reducing costs," spokesman Dennis Curtin said. Formula theft "has always been a problem, but in recent years it has accelerated and become more of a problem."

Formula

Saturday, February 3, 2007
Palm Beach Post

STUART —Seven people suspected of participating in a baby formula theft ring were arrested between Wednesday night and Thursday morning, all charged with dealing in stolen property. The arrests came after a tip from a confidential informant sparked surveillance by the Florida Department of Law Enforcement to find out who was stealing large quantities of baby formula from grocery and retail stores throughout the Treasure Coast.

"This just kind of rolled up on us," said Rich Piccininni, special agent in charge of FDLE's regional office in Fort Pierce. "We learned more and more about this as we went along, and we're still getting new details."

Piccininni said the group **stole more than 1,700 cans of formula** - about $48,000 worth - and may have planned to **send them to North Carolina** or another state nearby. An informant told investigators that the group on Wednesday was planning to steal formula from a Hobe Sound Winn-Dixie, then head to the Publix at Wedgewood Commons in Stuart to steal more. FDLE agents contacted the store manager at Publix while two men and two women were still inside the store. He confronted them and they ran, getting into a car and driving off before they could be captured.

The agents and Martin County sheriff's deputies, with help from the informant, were able to track the group to the Suburban Lodge and follow them to a storage facility, where agents saw them loading cans of baby formula into a storage unit. Sheriff's deputies then stepped in and arrested them. They have been identified as Rosa Padilla Valladeres, 44, Luis Rolando Valle-Flores, 30, Oscar Geovanny Milla Cartagena, 29, and Elsa Rivera-Hernandez, 21. **All four gave addresses in Wallace, N.C., when they were arrested.**

Piccininni said agents arrested Hilda Hernandez, 26, Rosa Lopez, 34 and Miguel Gomez, 26, Thursday morning. All seven were being held at the Martin County jail Thursday night without bail.

Baby formula in recent years has become a hot black market item, according to federal law enforcement authorities. Over the years, federal investigators have arrested people suspected of making millions selling stolen formula.

Officials so far this year have uncovered theft rings with links to Tennessee, Ohio, Georgia, Kentucky and Texas. On the Treasure Coast, five women were arrested in Port St. Lucie in 2004 when surveillance footage caught them hiding cans of formula in their purses.

Most of the stolen baby food is repackaged and sold, which health experts say poses a potential danger to infants. Drug dealers also sometimes use the powdered formula to cut cocaine.

Principal Clerk ____
Reading Clerk ____

Corrected Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 13, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 4	Sheriffs Access Rx Info.	Senator Snow
SB 21	Clarify dog fighting and baiting law.	Senator Snow
SB 34	Kill Police Animal.	Senator Swindell IV
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham
SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk
Reading Clerk

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, March 13, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 4	Sheriffs Access Rx Info.	Senator Snow
SB 21	Clarify dog fighting and baiting law.	Senator Snow
SB 34	Kill Police Animal.	Senator Swindell IV
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham
SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 13, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 13, 2007, with fifteen members present. Senator Hartsell introduced pages Audrey Iwerks and Eli Kendall and thanked them for their services.

SB 34 (Kill Police Animal.) Senator Hartsell recognized Senator Swindell to explain the bill. After his explanation, Senator Swindell introduced Sgt. Hicks, whose dog was killed in the line of duty. Questions from Senators Goodall and Jacumin were answered by Senator Swindell, Ms. Aimee Wall, Assistant Professor of Public Law & Government, UNC School of Government and Mr. Jeff Gray, representing the Fraternal Order of Police. Senator Snow moved for a favorable report, all voted and the motion carried.

SB 4 (Sheriff's Access Rx Info.) Senator Hartsell recognized Senator Snow for an explanation of the bill. Mr. Eddie Caldwell, representing the North Carolina Sheriffs Association and Sheriff Keith Lovin, Sheriff of Cherokee County spoke in favor of the bill. Mr. Andy Ellen, representing the Retail Merchants Association spoke in opposition to the bill. After much discussion, Senator Goodall moved for a favorable report. All voted and the motion carried.

SB 5 (Methadone Distribution/2nd Degree Murder.) Senator Hartsell recognized Senator Snow to explain the bill and noted that no action would be taken on the bill today.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 13 March 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe + Vera McClees	McClees Consulting, Inc.
Joe Stewart	UNC
Aimee Wall	UNC Institute of Gov't
Keith Lowin	Cherokee Co Sheriff
Eddie Caldwell	NC Sheriffs' Assn.
[illegible]	Fraternal Order of Police
Stephen Hicks	Rocky Mount Police Dept.
Howard Kendrick	Rocky Mount Police Dept.
Andy Ellen	NCRMA
Elizabeth [illegible]	NCRMA
Sarah Preston	ACLU-NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 13 March 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cliff Vancle	Gov's office
Daniel Daum	Kennedy Covington
John Rust	NCFPC
David Barnes	Poyner + Spruill
[illegible]	DWL
Hugh Tilson	NCAA
Bill Dolph	Granville County
[illegible]	SSI
Gary Robertson	AP
Bruce Thompson	Parker Poe
Dick Hamilton	Wildlife

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Pully	NCAJL
Jamal Jones	NCLA
Bill Rowe	NC Justice Center

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, March 13, 2007

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

FAVORABLE

S.B. **4** Sheriffs Access Rx Info.
Sequential Referral: None
Recommended Referral: None

S.B. **34** Kill Police Animal.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 4

Short Title:	Sheriffs Access Rx Info.	(Public)
Sponsors:	Senators Snow; Apodaca, Goodall, and Jenkins.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SHERIFFS TO INSPECT PRESCRIPTION PROFILES AND STOCKS OF CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-107 reads as rewritten:

"**§ 90-107. Prescriptions, stocks, etc., open to inspection by officials.**

Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this Article, to sheriffs, and to authorized employees of the North Carolina Department of Health and Human Services. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party."

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

SENATE BILL 4:
Sheriffs Access Rx Info

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 13, 2007
Introduced by:	Sen. Snow	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 4 would add sheriffs to the list of persons authorized to inspect prescriptions, order forms, and records of controlled substances.***

CURRENT LAW: Under current law, only federal and State officers and certain employees of the Department of Health and Human Services (DHHS) are authorized by statute to inspect prescriptions, order forms, and records of controlled substances. Under the statute, officers may only divulge knowledge gained through such inspections to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board.

BACKGROUND: The State constitution creates the office of sheriff (NC Const. art. VII, Sec. 2). Courts have held that a sheriff is a local officer rather than a state officer given that: (1) the constitutional provision that creates the office of sheriff is included within the article governing local governments, along with provisions for counties cities, towns, and other governmental subdivisions; and (2) other pertinent State statutes characterize a sheriff's department as a local government entity.

BILL ANALYSIS: The bill would authorize sheriffs, in addition to federal and State officers and employees of DHHS, to inspect prescriptions, order forms, and records of controlled substances.

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

S0004e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 21

Short Title:	Clarify Dog Fighting and Baiting Law.	(Public)
Sponsors:	Senators Snow; and Goodall.	
Referred to:	Judiciary II (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE STATUTE PROHIBITING DOG FIGHTING AND BAITING DOES NOT APPLY TO THE USE OF HERDING DOGS WORKING WITH DOMESTICATED LIVESTOCK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362.2 reads as rewritten:

"**§ 14-362.2. Dog fighting and baiting.**

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under the person's ownership or control to be used for, gambles on, or profits from an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is void, and a lessor who knows this use is made or is intended to be made of the lessor's property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the baiting of that dog or the fighting of that dog with another dog or with another animal is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony.

(d) This section does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

(e) This section does not apply to the use of herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes."

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

SENATE BILL 21:
Clarify Dog Fighting and Baiting Law

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 12, 2007
Introduced by:	Sen. Snow	**Summary by:**	Kory Goldsmith
Version:	First Edition		Committee Co-counsel

SUMMARY: SB21 provides that the law that prohibits individuals from engaging in dog fighting or dog baiting does not apply to the use of herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes.

This act is effective when it becomes law.

CURRENT LAW: A person is guilty of a Class H felony if the person instigates, promotes, conducts, is employed at, provides a dog for, allows property to be used for, gambles on, or profits from an exhibition featuring the baiting of a dog or the fighting of a dog with another dog. A lease for real property to be used as the site of dog baiting or dog fighting is void. A person who owns, possesses or trains a dog for fighting or baiting is guilty of a Class H felony. A person who participates as a spectator at a dog baiting or dog fight is guilty of a Class H felony.

The presumptive sentence for a person with no prior convictions is 5-6 months of community, intermediate, or active punishment.

The law does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 34

Short Title:	Kill Police Animal.	(Public)
Sponsors:	Senators Swindell; Albertson, Apodaca, Atwater, Berger of Rockingham, Bingham, Brock, Dalton, Dannelly, Goodall, Hoyle, Jenkins, Jones, Kinnaird, Nesbitt, Purcell, Snow, Stevens, Tillman, and Weinstein.	
Referred to:	Judiciary II (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS H FELONY TO WILLFULLY KILL OR ATTEMPT TO KILL A LAW ENFORCEMENT OR ASSISTANCE ANIMAL AND TO MAKE IT AN AGGRAVATING CIRCUMSTANCE FOR OTHER CRIMINAL OFFENSES THAT A LAW ENFORCEMENT OR ASSISTANCE ANIMAL WAS SERIOUSLY HARMED OR KILLED WHILE THE ANIMAL WAS ENGAGED IN PERFORMING OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 is amended by adding a new subsection to read as follows:

"(a1) Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully kills or attempts to kill the animal is guilty of a Class H felony."

SECTION 2. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(6a) The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal or assistance animal as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 34: Kill Police Animal

BILL ANALYSIS

Committee:	Senate Judiciary II	**Date:**	March 12, 2007
Introduced by:	Senator Swindell	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 34 would (1) make it a Class H felony for someone to willfully kill or attempt to kill a law enforcement agency animal or assistance animal and (2) make it an aggravating circumstance for other criminal offenses when a law enforcement agency animal or assistance animal was seriously harmed or killed while the animal was performing its official duties.

[As introduced, this bill was identical to H74, as introduced by Reps. Bryant, Daughtridge, Farmer-Butterfield, which is currently in House Judiciary I.]

CURRENT LAW: Law enforcement agency animal and assistance animal are defined terms. A *law enforcement agency animal* is "[a]n animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties." G.S. 14-163.1(a)(2). An *assistance animal* is "[a]n animal that is trained and may be used to assist a 'person with a disability' as defined in G.S. 168A-3. G.S. 14-163.1(a)(1).

Currently, North Carolina has a number of offenses related to assaulting a law enforcement agency animal or an assistance animal. G.S. 14-163.1. They are:

- **Willfully causing or attempting to cause *serious harm*-** Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause serious harm to the animal is guilty of a **Class I felony.** G.S. 14-163.1(b). ***Serious harm is*** defined in G.S. 14-163.1(a)(4)a-e.
- **Willfully causing or attempting to cause *harm*-** Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause harm to the animal is guilty of a **Class 1 misdemeanor**. G.S. 14-163.1(c). ***Harm*** is "any injury, illness, or other physiological impairment; or any behavioral impairment that impedes or interferes with duties performed by a law enforcement agency animal or an assistance animal." G.S. 14-163.1(a)(3).
- **Willfully *taunting, teasing, obstructing the animal*-** Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency animal or assistance animal is guilty of a **Class 2 misdemeanor**. G.S. 14-163.1(d).

A defendant who violates these provisions must make restitution to the person with a disability or the law enforcement agency who owns or is responsible for the care of the animal. G.S. 14-163.1(d1)(1)-(7). These provisions do not apply to licensed veterinarians following the North Carolina Veterinary Practice Act. Self-defense is an affirmative defense to these crimes, and the current law does not affect any civil remedies that might also be available.

For felony convictions, there are three ranges of imprisonment: (1) presumptive, (2) aggravated, and (3) mitigated. In many instances, the court will sentence a defendant in the presumptive range. If aggravating factors outweigh mitigating factors, a court may impose a term from the aggravated range. If mitigating factors outweigh aggravating factors, a court may impose a term from the mitigated range.

An aggravating factor is a factor which may increase a defendant's sentence. A mitigating factor is a factor which may decrease a defendant's sentence. G.S. 15A-1340.16(d) lists aggravating factors.

BILL ANALYSIS: Section 1 would make it a Class H felony for any person who knows or has reason to know that an animal is a law enforcement agency animal or assistance animal and who willfully kills or attempts to kill the animal.

Section 2 would make it an aggravating circumstance for a criminal offense when the offense was committed against or proximately caused serious harm or death to a law enforcement agency animal or assistance animal while the animal was performing its official duties.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Brad Krehely, counsel to House Judiciary I, substantially contributed to this summary.

S0034e1-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 34 (First Edition)

SHORT TITLE: Kill Police Animal.

SPONSOR(S): Senator Swindell

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction	**There is no historical data for existing offenses under G.S. 14-163.1, suggesting that few violations have occurred. Fiscal Research does not anticipate a significant impact due to this proposal. * See Assumptions and Methodology, pp. 2-4**				
Judicial	**There is no historical data for existing offenses under G.S. 14-163.1, suggesting that few violations have occurred. Fiscal Research does not anticipate a significant impact due to this proposal. * See Assumptions and Methodology, pp. 2-4**				
TOTAL EXPENDITURES:	**Amount cannot be determined.**				
ADDITIONAL PRISON BEDS: (cumulative)*	**Amount cannot be determined.**				
POSITIONS: (cumulative)	**Amount cannot be determined.**				

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

EFFECTIVE DATE: December 1, 2007

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 92

Short Title:	Dangerous Dogs/Liability Insurance.	(Public)
Sponsors:	Senators Bingham; Berger of Rockingham, Boseman, Garrou, Hagan, Jones, Purcell, Rand, and Stevens.	
Referred to:	Judiciary II (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF DANGEROUS AND POTENTIALLY DANGEROUS DOGS TO ACQUIRE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 67 of the General Statutes is amended by adding a new section to read:

"**§ 67-4.6. Owner required to have insurance.**

(a) Within 30 days of the determination by animal control authorities that a dog is a dangerous dog or a potentially dangerous dog under G.S. 67-4.1(a), the owner of the dog shall obtain, and upon demand present to an animal control officer evidence of, a policy of insurance in the amount of at least one hundred thousand dollars ($100,000) issued by an insurer authorized to do business in this State insuring the owner of the dog against liability for any personal injuries inflicted or other damage caused by the dog.

(b) Failure to obtain the insurance required by this section or to produce evidence of that insurance upon demand of an animal control officer is a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 5

Short Title:	Methadone Distribution/2nd Degree Murder.	(Public)
Sponsors:	Senators Snow; Boseman, Goodall, and Jenkins.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD METHADONE AND OTHER SCHEDULE II DRUGS TO COCAINE AND METHAMPHETAMINE AS CONTROLLED SUBSTANCES WHICH, IF UNLAWFULLY DISTRIBUTED AND CAUSE A DEATH, ALLOW FOR A CHARGE OF SECOND DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other any substance described in G.S. 90-90, ~~G.S. 90-90(1)d., or methamphetamine,~~ when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 5:
Methadone Distribution/2nd Degree Murder

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 12, 2007
Introduced by:	Sen. Snow	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	First Edition		

SUMMARY: ***SB5 would make it second degree murder to unlawfully distribute any Schedule II controlled substance when the ingestion of the substance causes the user's death. Second degree murder is a Class B2 felony.***

The act would become effective December 1, 2007, and apply to acts committed on or after that date.

CURRENT LAW: A person is guilty of second degree murder when the offender kills another person with malice. There is no requirement that the prosecution show a specific intent to kill, and malice may be inferred by cruel and reckless acts that indicate a total disregard for human life. It is also second degree murder if a defendant unlawfully distributes opium, cocaine, a derivative of either substance or methamphetamine[1], and ingestion of that substance causes the user's death. G.S. 14-17. Second degree murder is a Class B2 felony with a presumptive minimum sentence of 125 months imprisonment for a defendant with no prior convictions.

A person who proximately causes the death of another through the unlawful distribution of a Schedule II controlled substance, other than those specified in G.S. 14-17, could be charged with and convicted of involuntary manslaughter, which is a Class F felony. Minimum and maximum sentences for Class F offenses (across all prior record levels) range from 10 to 49 months.

BILL ANALYSIS: SB5 would expand the types of controlled substances that could result in a charge of second degree murder if the defendant illegally distributes the substance and the user dies as a result of ingesting the substance. The new law would apply to all Schedule II substances, including methadone, a synthetic opiate used to treat heroin addiction. However, as written, the bill would not cover certain Schedule I controlled substances, including certain depressants, stimulants, and hallucinogenic compounds.

Second degree murder is a Class B2 felony with a presumptive minimum sentence of 125 months imprisonment for a defendant with no prior convictions.

EFFECTIVE DATE: The act would become effective December 1, 2007, and apply to offenses committed on or after that date.

S0005e1-SMRC

[1] Opium, cocaine, derivatives of those substances and methamphetamine are all Schedule II controlled substances. For a complete list of all Schedule II controlled substances, please see G.S. 90-90, attached.

§ 90-90. Schedule II controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:

1. Raw opium.
2. Opium extracts.
3. Opium fluid extracts.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone.
11. Hydromorphone.
12. Metopon.
13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.

b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except

that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

a. Alfentanil.
b. Alphaprodine.
c. Anileridine.
d. Bezitramide.
e. Carfentanil.
f. Dihydrocodeine.
g. Diphenoxylate.
h. Fentanyl.
i. Isomethadone.
j. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
k. Levomethorphan.
l. Levorphanol.
m. Metazocine.
n. Methadone.
o. Methadone – Intermediate, 4-cyano-2-dimethylamino-4, 4- diphenyl butane.
p. Moramide – Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
q. Pethidine.
r. Pethidine – Intermediate – A, 4-cyano-1-methyl-4-phenylpiperidine.
s. Pethidine – Intermediate – B, ethyl-4-phenylpiperidine-4-carboxylate.
t. Pethidine – Intermediate – C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
u. Phenazocine.
v. Piminodine.
w. Racemethorphan.
x. Racemorphan.
y. Remifentanil.
z. Sufentanil.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:

a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
b. Phenmetrazine and its salts.
c. Methamphetamine, including its salts, isomers, and salts of isomers.
d. Methylphenidate.
e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:
a. Amobarbital
b. Glutethimide
c. Repealed by Session Laws 1983, c. 695, s. 2.
d. Pentobarbital
e. Phencyclidine
f. Phencyclidine immediate precursors:
1. 1-Phenylcyclohexylamine
2. 1-Piperidinocyclohexanecarbonitrile (PCC)
g. Secobarbital.

(5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Repealed by Session Laws 2001-233, s. 2(a).
b. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 15, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 21	Clarify dog fighting and baiting law.	Senator Snow
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, March 15, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 21	Clarify dog fighting and baiting law.	Senator Snow
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 15, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 15, 2007, with eleven members present. Senator Hartsell introduced pages Audrey Iwerks and Eli Kendall and thanked them for their service.

SB 21 (Clarify Dog Fighting and Baiting Law.) Senator Hartsell recognized Senator Snow to explain the bill. Senator Goodall's question was answered by Senator Snow and Ms. Henri McClees, of McClees Consulting thanked Senator Snow and the committee for the bill. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB 92 (Dangerous Dogs/Liability Insurance.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Goodall so moved, all voted and the motion carried. Senator Bingham was recognized to explain the bill. After much discussion, the bill was displaced and Senator Hartsell noted the bill would be heard again at a later date.

SB 5 (Methadone Distribution/2nd Degree Murder.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Berger so moved, all voted and the motion carried. Senator Snow was recognized to introduce Ms. Candice Cash, to speak on the bill. Ms. Cash had lost a friend due to Methadone. Senator Hartsell noted that the bill would be heard again at a later date. No action was taken on the bill.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 15 March 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Judy McConnell	Daily Bulletin
Joe McClee	McClee Consult
Jenni McClees	McClees Consulting
John McNeff	Comcast
Susan VaCanni	Nationwide
Joe Stewart	IFNC
Patrick Boffkin	NELSON MULLINS
Andy Ellen	Mkmm
John Nest	JCFPC
Jonathan Ducote	Staff
Bill Snodgrass	KC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 15th March 2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner Spruill

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, March 15, 2007

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

FAVORABLE

S.B. **21** Clarify dog fighting and baiting law.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 5

Short Title:	Methadone Distribution/2nd Degree Murder.	(Public)
Sponsors:	Senators Snow; Boseman, Goodall, and Jenkins.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD METHADONE AND OTHER SCHEDULE II DRUGS TO COCAINE AND METHAMPHETAMINE AS CONTROLLED SUBSTANCES WHICH, IF UNLAWFULLY DISTRIBUTED AND CAUSE A DEATH, ALLOW FOR A CHARGE OF SECOND DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other any substance described in G.S. 90-90, ~~G.S. 90-90(1)d., or methamphetamine,~~ when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 5
PROPOSED COMMITTEE SUBSTITUTE S5-CSRC-6 [v.1]

3/14/2007 2:05:57 PM

Short Title: Methadone Distribution/2nd Degree Murder. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD METHADONE AND OTHER SCHEDULE I AND II DRUGS TO COCAINE AND METHAMPHETAMINE AS CONTROLLED SUBSTANCES WHICH, IF UNLAWFULLY DISTRIBUTED AND CAUSE A DEATH, ALLOW FOR A CHARGE OF SECOND DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other any substance described in G.S. 90-89 and G.S. 90-90, ~~G.S. 90-90(1)d., or methamphetamine,~~ when the ingestion of such

substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 5:
Methadone Distribution/2nd Degree Murder

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 14, 2007
Introduced by:	Sen. Snow	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S5-CSRC-6		

SUMMARY: ***The Proposed Committee Substitute to SB5 would make it second degree murder to unlawfully distribute any Schedule I or II controlled substance when the ingestion of the substance causes the user's death. Second degree murder is a Class B2 felony.***

The act would become effective December 1, 2007, and apply to acts committed on or after that date.

The PCS adds all Schedule I drugs to the bill draft.

CURRENT LAW: A person is guilty of second degree murder when the offender kills another person with malice. There is no requirement that the prosecution show a specific intent to kill, and malice may be inferred by cruel and reckless acts that indicate a total disregard for human life.

It is also second degree murder if a defendant unlawfully distributes opium, cocaine, a derivative of either substance or methamphetamine[1], and ingestion of that substance causes the user's death. G.S. 14-17. Second degree murder is a Class B2 felony with a presumptive minimum sentence of 125 months imprisonment for a defendant with no prior convictions.

Opiates, opium and opium derivatives are both Schedule I and Schedule II controlled substances. Cocaine and its derivatives, and methamphetamine are Schedule II controlled substances.

A person who proximately causes the death of another through the unlawful distribution of a controlled substance, other than those specified in G.S. 14-17, could be charged with and convicted of involuntary manslaughter, which is a Class F felony. Minimum and maximum sentences for Class F offenses (across all prior record levels) range from 10 to 49 months.

BILL ANALYSIS: SB5 would expand the types of controlled substances that could result in a charge of second degree murder if the defendant illegally distributes the substance and the user dies as a result of ingesting the substance. The new law would apply to all Schedule I and Schedule II controlled substances, including methadone.

Second degree murder is a Class B2 felony with a presumptive minimum sentence of 125 months imprisonment for a defendant with no prior convictions.

EFFECTIVE DATE: The act would become effective December 1, 2007, and apply to offenses committed on or after that date.

S0005e1-SMRC-CSRC-6

[1] For a complete list of all Schedule I and II controlled substances, please see G.S. 90-89 and 90, attached.

§ 90-89. Schedule I controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
b. Acetylmethadol.
c. Repealed by Session Laws 1987, c. 412, s. 2.
d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
e. Allylprodine.
f. Alphacetylmethadol.
g. Alphameprodine.
h. Alphamethadol.
i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
j. Benzethidine.
k. Betacetylmethadol.
l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropa namide).
n. Betameprodine.
o. Betamethadol.
p. Betaprodine.
q. Clonitazene.
r. Dextromoramide.
s. Diampromide.
t. Diethylthiambutene.
u. Difenoxin.
v. Dimenoxadol.
w. Dimepheptanol.
x. Dimethylthiambutene.

y. Dioxaphetyl butyrate.
z. Dipipanone.
aa. Ethylmethylthiambutene.
bb. Etonitazene.
cc. Etoxeridine.
dd. Furethidine.
ee. Hydroxypethidine.
ff. Ketobemidone.
gg. Levomoramide.
hh. Levophenacylmorphan.
ii. 1-methyl-4-phenyl-4-propionox ypiperidine (MPPP).
jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Pi-peridyl]-N-Phenylpropanamide).
kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropa namide).
lo . Morpheridine.
mm. Noracymethadol.
nn. Norlevorphanol.
oo. Normethadone.
pp. Norpipanone.
qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]-propanamide.
rr. Phenadoxone.
ss. Phenampromide.
tt. 1-(2-phenethyl)-4-phenyl-4-ac etoxypiperidine (PEPAP).
uu. Phenomorphan.
vv. Phenoperidine.
ww. Piritramide.
xx. Proheptazine.
yy. Properidine.
zz. Propiram.
aaa. Racemoramide.
bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
ccc. Tilidine.
ddd. Trimeperidine.

(2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.

d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Pholcodine.
v. Thebacon.
w. Drotebanol.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4-methylenedioxyamphetamine.
b. 5-methoxy-3, 4-methylenedioxyamphetamine.
c. 3, 4-Methylenedioxymethamphetamine (MDMA).
d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
f. 3, 4, 5-trimethoxyamphetamine.
g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3- ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
h. Bufotenine.
i. Diethyltryptamine.
j. Dimethyltryptamine.
k. 4-methyl-2, 5-dimethoxyamphetamine.
l. Ibogaine.
m. Lysergic acid diethylamide.

n. Mescaline.
o. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
p. N-ethyl-3-piperidyl benzilate.
q. N-methyl-3-piperidyl benzilate.
r. Psilocybin.
s. Psilocin.
t. 2, 5-dimethoxyamphetamine.
u. 2, 5-dimethoxy-4-ethylamphetamin e. Some trade or other names: DOET.
v. 4-bromo-2, 5-dimethoxyamphetamine.
w. 4-methoxyamphetamine.
x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrol idine, PCPy, PHP.
z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2- thienyl analog of phencyclidine, TPCP, TCP.
aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
bb. Parahexyl.
cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.

(4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
a. Mecloqualone.
b. Methaqualone.
c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

(5) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenly-2-oxazolamine.

b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
c. Fenethylline.
d. Methcathinone. Some trade or other names: 2-(methylamino)propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1- phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL- 464, AL-422, AL-463, and UR1432.
e. (+/-)cis-4-methylaminorex |(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine_ (also known as 2-amino-4-methyl-5-phenyl-2-o xazoline).
f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneetha neamine; N,N,alpha-trimethylphenethyla mine.
g. N-ethylamphetamine.

§ 90-90. Schedule II controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:
a. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:
1. Raw opium.
2. Opium extracts.
3. Opium fluid extracts.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone.
11. Hydromorphone.
12. Metopon.

13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.

b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

a. Alfentanil.
b. Alphaprodine.
c. Anileridine.
d. Bezitramide.
e. Carfentanil.
f. Dihydrocodeine.
g. Diphenoxylate.
h. Fentanyl.
i. Isomethadone.
j. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
k. Levomethorphan.
l. Levorphanol.
m. Metazocine.
n. Methadone.
o. Methadone – Intermediate, 4-cyano-2-dimethylamino-4, 4- diphenyl butane.
p. Moramide – Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.

q. Pethidine.
r. Pethidine – Intermediate – A, 4-cyano-1-methyl-4-phenylpiperidine.
s. Pethidine – Intermediate – B, ethyl-4-phenylpiperidine-4-carboxylate.
t. Pethidine – Intermediate – C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
u. Phenazocine.
v. Piminodine.
w. Racemethorphan.
x. Racemorphan.
y. Remifentanil.
z. Sufentanil.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:
a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
b. Phenmetrazine and its salts.
c. Methamphetamine, including its salts, isomers, and salts of isomers.
d. Methylphenidate.
e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:
a. Amobarbital
b. Glutethimide
c. Repealed by Session Laws 1983, c. 695, s. 2.
d. Pentobarbital
e. Phencyclidine
f. Phencyclidine immediate precursors:
1. 1-Phenylcyclohexylamine
2. 1-Piperidinocyclohexanecarbonitrile (PCC)
g. Secobarbital.

(5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Repealed by Session Laws 2001-233, s. 2(a).

b. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 21

Short Title:	Clarify Dog Fighting and Baiting Law.	(Public)
Sponsors:	Senators Snow; and Goodall.	
Referred to:	Judiciary II (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE STATUTE PROHIBITING DOG FIGHTING AND BAITING DOES NOT APPLY TO THE USE OF HERDING DOGS WORKING WITH DOMESTICATED LIVESTOCK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362.2 reads as rewritten:

"**§ 14-362.2. Dog fighting and baiting.**

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under the person's ownership or control to be used for, gambles on, or profits from an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is void, and a lessor who knows this use is made or is intended to be made of the lessor's property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the baiting of that dog or the fighting of that dog with another dog or with another animal is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony.

(d) This section does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

(e) This section does not apply to the use of herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes."

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

SENATE BILL 21:
Clarify Dog Fighting and Baiting Law

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 12, 2007
Introduced by:	Sen. Snow	**Summary by:**	Kory Goldsmith
Version:	First Edition		Committee Co-counsel

SUMMARY: SB21 provides that the law that prohibits individuals from engaging in dog fighting or dog baiting does not apply to the use of herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes.

This act is effective when it becomes law.

CURRENT LAW: A person is guilty of a Class H felony if the person instigates, promotes, conducts, is employed at, provides a dog for, allows property to be used for, gambles on, or profits from an exhibition featuring the baiting of a dog or the fighting of a dog with another dog. A lease for real property to be used as the site of dog baiting or dog fighting is void. A person who owns, possesses or trains a dog for fighting or baiting is guilty of a Class H felony. A person who participates as a spectator at a dog baiting or dog fight is guilty of a Class H felony.

The presumptive sentence for a person with no prior convictions is 5-6 months of community, intermediate, or active punishment.

The law does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 92

Short Title:	Dangerous Dogs/Liability Insurance.	(Public)
Sponsors:	Senators Bingham; Berger of Rockingham, Boseman, Garrou, Hagan, Jones, Purcell, Rand, and Stevens.	
Referred to:	Judiciary II (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF DANGEROUS AND POTENTIALLY DANGEROUS DOGS TO ACQUIRE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 67 of the General Statutes is amended by adding a new section to read:

"**§ 67-4.6. Owner required to have insurance.**

(a) Within 30 days of the determination by animal control authorities that a dog is a dangerous dog or a potentially dangerous dog under G.S. 67-4.1(a), the owner of the dog shall obtain, and upon demand present to an animal control officer evidence of, a policy of insurance in the amount of at least one hundred thousand dollars ($100,000) issued by an insurer authorized to do business in this State insuring the owner of the dog against liability for any personal injuries inflicted or other damage caused by the dog.

(b) Failure to obtain the insurance required by this section or to produce evidence of that insurance upon demand of an animal control officer is a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 92
PROPOSED COMMITTEE SUBSTITUTE S92-CSRC-7 [v.2]

3/14/2007 7:51:41 PM

Short Title: Dangerous Dogs/Financial Responsibility. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF SOME DANGEROUS AND POTENTIALLY DANGEROUS DOGS TO PROVIDE PROOF OF FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 67 of the General Statutes is amended by adding a new section to read:

"**§ 67-4.6. Proof of financial responsibility.**

(a) Upon a determination under G.S. 67-4.1(c) that a dog is a dangerous dog or a potentially dangerous dog under G.S. 67-4.1(a)(1)a.1., G.S. 67-4.1(a)(1)b., or G.S. 67-4.1(a)(2)a., the person or Board making that determination may require the owner of the dog to obtain the bond of a surety company duly authorized to transact business in the State. The amount of the bond shall be set by the person or board that made the determination that the dog is dangerous or potentially dangerous, but the amount of the bond shall not be more than one hundred thousand dollars ($100,000). The bond shall be conditioned for payment by the owner for liability for any personal injuries inflicted or other damage caused by the dog. An owner who is required to obtain a bond under this subsection shall upon demand present to an animal control officer evidence of the bond.

(b) The owner shall obtain a bond in the required amount within fifteen days of being ordered to do so. The owner may appeal the decision to require a bond, the amount of the bond, or both in the same manner as provided in G.S. 67-4.1(c). The appeals process does not stay the owner's obligation to obtain and maintain the bond.

(c) Failure to obtain the bond required by this section or to produce evidence of the bond upon demand of an animal control officer is a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007, and applies to determinations made on or after that date.

SENATE BILL 92:
Dangerous Dogs/Financial Responsibility

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 14, 2007
Introduced by:	Sen. Bingham	**Summary by:**	Kory Goldsmith Committee Co-Counsel
Version:	PCS to First Edition S92-CSRC-7		

SUMMARY: SB92 would allow require owners of dogs of some dog that have been determined to be dangerous or potentially dangerous to obtain a bond to pay for liability incurred due to injury or damage caused by the dog. The bond could not exceed $100,000 Failure to obtain the bond or to produce evidence of the bond upon demand of an animal control officer would be a Class 1 misdemeanor.

The Proposed Committee Substitute substantially rewrites the original bill.

The act would become effective October 1, 2007, and apply to determinations occurring on or after that date.

CURRENT LAW: Article 1A of Chapter 67 governs dangerous dogs.[1] A dangerous dog is a dog that has: (1) without provocation killed or inflicted severe injury to a person, or (2) is designated as a potentially dangerous animal, or (3) is owned primarily for the purpose of dog fighting or trained for dog fighting.[2] G.S. 67-4.1(c) provides that the county or municipal authority responsible for animal control may designate a separate person or Board to be responsible for determining when a dog is a "potentially dangerous dog". A potentially dangerous dog is a dog that has been determined to have: (1) inflicted a bite to a person causing broken bones or disfiguring lacerations; (2) killed or inflected severe injury upon domestic animal; or (3) approached a person when the dog was not on its owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

The Article does not apply to a dog: (1) being used by law enforcement to carry out the officer's official duties; (2) being used in a lawful hunt; (3) where the injury inflicted by the dog to a domestic animal occurred as the dog was working as a hunting dog, herding dog, or predator control dog; or (4) where the injury inflicted by the dog was sustained by a person who was committing a willful trespass, or tormenting the dog or attempting to commit a crime.[3]

It is unlawful for the owner of a dangerous dog to leave the dog unattended on the owner's real property unless the dog is confined indoors or in a securely enclosed and locked pen. It is also unlawful to allow a dangerous dog to leave the owner's real property unless the dog is leased and muzzled. A violation of these provisions is a Class 3 misdemeanor.[4] The owner of a dangerous dog that inflicts physical injuries requiring medical treatment in excess of $100 is guilty of a Class 1 misdemeanor.[5] The owner is strictly liable for any injuries or property damage caused by the dog.[6]

BILL ANALYSIS: The PCS to SB92 provides that the person or Board that is designated to determine whether a dog is dangerous or potentially dangerous may, upon making that determination, also require

[1] G.S. 67-4.1 to 4.5.
[2] G.S. 67-4.1(a)(1) and (2).
[3] G.S. 67-4.1(b)
[4] G.S. 67-4.2
[5] G.S. 67-4.3
[6] G.S. 67-4.4

that the owner of the dog post a bond in an amount not to exceed $100,000. The owner could appeal either the requirement of the bond, the amount of the bond or both under an existing procedure. However, the owner would have to maintain the bond during the period of the appeal. Failure to obtain the bond would be a Class 1 misdemeanor.

EFFECTIVE DATE: The act would become effective October 1, 2007, and apply to determinations made on or after that date.

BACKGROUND: The Centers for Disease Control and Prevention (CDC) reports that 4.7 million people are bitten by dogs annually, resulting in an estimated 800,000 injuries requiring medical attention.

S0092e1-SMRC-CSRC-7

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 20, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 393	Felony/Steal Or Cut Another's Timber.	Senator Weinstein
SB 543	UNC Public Records Amendments.-AB	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, March 20, 2007, 10:00 AM
1124

REVISED AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 393	Felony/Steal Or Cut Another's Timber.	Senator Weinstein
SB 613	General Statutes Comm. Technical Corrections.	Senator Hartsell

Presentations

Other Business

Adjournment

Senate Judiciary II (Criminal) Committee
Tuesday, March 20, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 393	Felony/Steal Or Cut Another's Timber.	Senator Weinstein
SB 613	General Statutes Comm. Technical Corrections.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 20, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 20, 2007, with eleven members present. Senator Hartsell recognized pages Kasey Weaver and Jessica Weaver and thanked them for their service to the Committee.

SB 613 (General Statutes Comm. Technical Corrections.) As this was Senator Hartsell's bill, he asked Senator Allran to preside. Senator Allran then recognized Senator Hartsell to explain the bill. Senator Kerr's question was answered by Senator Hartsell. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB 393 (Felony/Steal or Cut Another's Timber.) Senator Weinstein was recognized to explain the bill. During the discussion, Mr. Bob Slocum, representing the North Carolina Forestry Association, spoke on the bill. Senator Weinstein sent forth an amendment. Senator Allran moved to adopt the amendment but after much discussion, Senator Weinstein withdrew his amendment. Senator Goodall moved for a favorable report. All voted and the motion carried.

SB 5 (Methadone Distribution/2nd Degree Murder.) Senator Snow was recognized to explain the Proposed Committee Substitute which had been adopted at a previous meeting. Senator Jones' question was answered by Senator Snow. Senator Bingham moved for a favorable report as to the Proposed Committee Substitute. The bill will be held for additional information.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, March 20, 2007

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

FAVORABLE

S.B. **613** General Statutes Comm. Technical Corrections.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 20, 2017

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Stevens	NC FORESTRY ASSOC
P. Sherrill	General Statutes Com
Alice Garland	NCPL
Rod Phillips	FARMERS
[illegible]	SST
[illegible]	WCSR
[illegible]	[illegible]
[illegible]	Gov. Off.
[illegible]	NCFTL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 5

Short Title:	Methadone Distribution/2nd Degree Murder.	(Public)
Sponsors:	Senators Snow; Boseman, Goodall, and Jenkins.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD METHADONE AND OTHER SCHEDULE II DRUGS TO COCAINE AND METHAMPHETAMINE AS CONTROLLED SUBSTANCES WHICH, IF UNLAWFULLY DISTRIBUTED AND CAUSE A DEATH, ALLOW FOR A CHARGE OF SECOND DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other any substance described in G.S. 90-90, ~~G.S. 90-90(1)d., or methamphetamine,~~ when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 5
PROPOSED COMMITTEE SUBSTITUTE S5-CSRC-6 [v.1]

3/14/2007 2:05:57 PM

Short Title: Methadone Distribution/2nd Degree Murder. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD METHADONE AND OTHER SCHEDULE I AND II DRUGS TO COCAINE AND METHAMPHETAMINE AS CONTROLLED SUBSTANCES WHICH, IF UNLAWFULLY DISTRIBUTED AND CAUSE A DEATH, ALLOW FOR A CHARGE OF SECOND DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other any substance described in G.S. 90-89 and G.S. 90-90, ~~G.S. 90-90(1)d., or methamphetamine,~~ when the ingestion of such

substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 5:
Methadone Distribution/2nd Degree Murder

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 14, 2007
Introduced by:	Sen. Snow	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S5-CSRC-6		

SUMMARY: ***The Proposed Committee Substitute to SB5 would make it second degree murder to unlawfully distribute any Schedule I or II controlled substance when the ingestion of the substance causes the user's death. Second degree murder is a Class B2 felony.***

The act would become effective December 1, 2007, and apply to acts committed on or after that date.

The PCS adds all Schedule I drugs to the bill draft.

CURRENT LAW: A person is guilty of second degree murder when the offender kills another person with malice. There is no requirement that the prosecution show a specific intent to kill, and malice may be inferred by cruel and reckless acts that indicate a total disregard for human life.

It is also second degree murder if a defendant unlawfully distributes opium, cocaine, a derivative of either substance or methamphetamine[1], and ingestion of that substance causes the user's death. G.S. 14-17. Second degree murder is a Class B2 felony with a presumptive minimum sentence of 125 months imprisonment for a defendant with no prior convictions.

Opiates, opium and opium derivatives are both Schedule I and Schedule II controlled substances. Cocaine and its derivatives, and methamphetamine are Schedule II controlled substances.

A person who proximately causes the death of another through the unlawful distribution of a controlled substance, other than those specified in G.S. 14-17, could be charged with and convicted of involuntary manslaughter, which is a Class F felony. Minimum and maximum sentences for Class F offenses (across all prior record levels) range from 10 to 49 months.

BILL ANALYSIS: SB5 would expand the types of controlled substances that could result in a charge of second degree murder if the defendant illegally distributes the substance and the user dies as a result of ingesting the substance. The new law would apply to all Schedule I and Schedule II controlled substances, including methadone.

Second degree murder is a Class B2 felony with a presumptive minimum sentence of 125 months imprisonment for a defendant with no prior convictions.

EFFECTIVE DATE: The act would become effective December 1, 2007, and apply to offenses committed on or after that date.

S0005e1-SMRC-CSRC-6

[1] For a complete list of all Schedule I and II controlled substances, please see G.S. 90-89 and 90, attached.

§ 90-89. Schedule I controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
b. Acetylmethadol.
c. Repealed by Session Laws 1987, c. 412, s. 2.
d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
e. Allylprodine.
f. Alphacetylmethadol.
g. Alphameprodine.
h. Alphamethadol.
i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
j. Benzethidine.
k. Betacetylmethadol.
l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropa namide).
n. Betameprodine.
o. Betamethadol.
p. Betaprodine.
q. Clonitazene.
r. Dextromoramide.
s. Diampromide.
t. Diethylthiambutene.
u. Difenoxin.
v. Dimenoxadol.
w. Dimepheptanol.
x. Dimethylthiambutene.

y. Dioxaphetyl butyrate.
z. Dipipanone.
aa. Ethylmethylthiambutene.
bb. Etonitazene.
cc. Etoxeridine.
dd. Furethidine.
ee. Hydroxypethidine.
ff. Ketobemidone.
gg. Levomoramide.
hh. Levophenacylmorphan.
ii. 1-methyl-4-phenyl-4-propionox ypiperidine (MPPP).
jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Pi-peridyl]-N-Phenylpropanamide).
kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropa namide).
lo . Morpheridine.
mm. Noracymethadol.
nn. Norlevorphanol.
oo. Normethadone.
pp. Norpipanone.
qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]-propanamide.
rr. Phenadoxone.
ss. Phenampromide.
tt. 1-(2-phenethyl)-4-phenyl-4-ac etoxypiperidine (PEPAP).
uu. Phenomorphan.
vv. Phenoperidine.
ww. Piritramide.
xx. Proheptazine.
yy. Properidine.
zz. Propiram.
aaa. Racemoramide.
bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
ccc. Tilidine.
ddd. Trimeperidine.

(2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.

d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Pholcodine.
v. Thebacon.
w. Drotebanol.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4-methylenedioxyamphetamine.
b. 5-methoxy-3, 4-methylenedioxyamphetamine.
c. 3, 4-Methylenedioxymethamphetamine (MDMA).
d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
f. 3, 4, 5-trimethoxyamphetamine.
g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3- ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
h. Bufotenine.
i. Diethyltryptamine.
j. Dimethyltryptamine.
k. 4-methyl-2, 5-dimethoxyamphetamine.
l. Ibogaine.
m. Lysergic acid diethylamide.

n. Mescaline.
o. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
p. N-ethyl-3-piperidyl benzilate.
q. N-methyl-3-piperidyl benzilate.
r. Psilocybin.
s. Psilocin.
t. 2, 5-dimethoxyamphetamine.
u. 2, 5-dimethoxy-4-ethylamphetamin e. Some trade or other names: DOET.
v. 4-bromo-2, 5-dimethoxyamphetamine.
w. 4-methoxyamphetamine.
x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrol idine, PCPy, PHP.
z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2- thienyl analog of phencyclidine, TPCP, TCP.
aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
bb. Parahexyl.
cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.

(4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
a. Mecloqualone.
b. Methaqualone.
c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

(5) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenly-2-oxazolamine.

b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
c. Fenethylline.
d. Methcathinone. Some trade or other names: 2-(methylamino)propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1- phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL- 464, AL-422, AL-463, and UR1432.
e. (+/-)cis-4-methylaminorex |(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine_ (also known as 2-amino-4-methyl-5-phenyl-2-o xazoline).
f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneetha neamine; N,N,alpha-trimethylphenethyla mine.
g. N-ethylamphetamine.

§ 90-90. Schedule II controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:
a. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:
1. Raw opium.
2. Opium extracts.
3. Opium fluid extracts.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone.
11. Hydromorphone.
12. Metopon.

13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.

b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

a. Alfentanil.
b. Alphaprodine.
c. Anileridine.
d. Bezitramide.
e. Carfentanil.
f. Dihydrocodeine.
g. Diphenoxylate.
h. Fentanyl.
i. Isomethadone.
j. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
k. Levomethorphan.
l. Levorphanol.
m. Metazocine.
n. Methadone.
o. Methadone – Intermediate, 4-cyano-2-dimethylamino-4, 4- diphenyl butane.
p. Moramide – Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.

q. Pethidine.
r. Pethidine – Intermediate – A, 4-cyano-1-methyl-4-phenylpiperidine.
s. Pethidine – Intermediate – B, ethyl-4-phenylpiperidine-4-carboxylate.
t. Pethidine – Intermediate – C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
u. Phenazocine.
v. Piminodine.
w. Racemethorphan.
x. Racemorphan.
y. Remifentanil.
z. Sufentanil.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:
a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
b. Phenmetrazine and its salts.
c. Methamphetamine, including its salts, isomers, and salts of isomers.
d. Methylphenidate.
e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:
a. Amobarbital
b. Glutethimide
c. Repealed by Session Laws 1983, c. 695, s. 2.
d. Pentobarbital
e. Phencyclidine
f. Phencyclidine immediate precursors:
1. 1-Phenylcyclohexylamine
2. 1-Piperidinocyclohexanecarbonitrile (PCC)
g. Secobarbital.

(5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Repealed by Session Laws 2001-233, s. 2(a).

b. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

Schedules of Controlled Substances	Substances include
Schedule I High potential for abuse. No currently accepted medical use in US, or lack of accepted safety for use in treatment under medical supervision.	Heroine Ecstasy GHB Methaqualone Peyote Opiates (and others)
Schedule II High potential for abuse. Currently accepted medical use in Us, or currently accepted medical use with severe restrictions. Abuse may lead to severe psychic or physical dependence.	Cocaine Raw Opium Opium Extracts, Fluid and Powder Codeine Hydrocodone Morphine Methadone Methamphetamine Ritalin (and others)
Schedule III Potential for abuse, but less than Schedule I or II substances. Currently accepted medical use in US. Abuse may lead to moderate or low physical dependence or high psychological dependence.	Ketamine Anabolic Steroids Some Barbituates (and others)
Schedule IV Low potential for abuse relative to substances listed in Schedule III. Currently accepted medical use in US. Limited physical or psychological dependence relative to substances listed in Schedule III.	Valium Xanax Rohypnol Darvon Clonazepam Barbital (and others)
Schedule V Low potential for abuse relative to substances listed in Schedule IV. Currently accepted medical use in US. Limited physical or psychological dependence relative to substances listed in Schedule IV.	Over the counter cough medicines with codeine (and others)
Schedule VI No currently accepted medical use in US, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic and physiological dependence liability based upon present medical knowledge, or a need for further study to develop scientific evidence of pharmacological effects.	Marijuana Hashish Hashish Oil

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 393

Short Title:	Felony/Steal Or Cut Another's Timber.	(Public)
Sponsors:	Senators Weinstein; Albertson, Apodaca, Atwater, Brock, Dannelly, Malone, Snow, Stevens, and Swindell.	
Referred to:	Judiciary ll (Criminal).	

February 28, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CUTTING, INJURING, OR REMOVING ANOTHER'S TIMBER RESULTING IN DAMAGES THAT EXCEED ONE THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-135 reads as rewritten:

"**§ 14-135. Cutting, injuring, or removing another's timber.**

If any person not being the bona fide owner thereof, shall knowingly and willfully cut down, injure or remove any standing, growing or fallen tree or log, the property of another, he shall be guilty of a ~~Class 1 misdemeanor.~~criminal offense as follows:

(1) If the damage caused by a violation of this section is one thousand dollars ($1,000) or less, then the offense is a Class 1 misdemeanor.

(2) If the damage caused by a violation of this section is more than one thousand dollars ($1,000), then the offense is a Class I felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 393:
Felony/Steal Or Cut Another's Timber

BILL ANALYSIS

Committee:	Senate Judiciary ll (Criminal)	**Date:**	March 20, 2007
Introduced by:	Sen. Weinstein	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 393 would increase the penalty for cutting down, injuring, or removing another's timber if the value is over $1,000 to a Class I felony.***

CURRENT LAW: Under current law, any one who knowingly and willfully cuts down, injures, or removes any standing, growing or fallen tree or log, on the property of another, is guilty of a Class 1 misdemeanor (G.S. 14- 135).

In addition, the person doing so may be liable to the owner for double the value of the timber injured, cut, or removed (G.S. 1-539.1).

BILL ANALYSIS: The bill would create a two tier penalty system for the offense, so that if the value of the timber unlawfully cut, injured or removed is: (1) $1,000 or less, the punishment would be a Class 1 misdemeanor[1]; (2) more than a $1,000, the punishment would be a Class I felony[2].

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

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[1] A Class 1 misdemeanor is punishable by 1 to 45 days of community punishment, assuming no prior convictions.
[2] The presumptive range of punishment for a Class I felony when there are no prior convictions is 4 to 6 months of community punishment.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 613*

Short Title:	General Statutes Comm. Technical Corrections.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary ll (Criminal).	

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-142.1(i) reads as rewritten:

"(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~the~~ individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10."

SECTION 2. G.S. 110-142.1(l) reads as rewritten:

"(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or ~~reimbursement~~ reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying

that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section."

SECTION 3. G.S. 70-27(b) reads as rewritten:

"(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to ~~G.S. 130-198~~ G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information."

SECTION 4. G.S. 70-30 reads as rewritten:

"**§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of ~~G.S. 130-198.~~ G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner."

SECTION 5. G.S. 70-39 reads as rewritten:

"**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of ~~G.S. 130-198~~ G.S. 130A-383 are not subject to the prohibitions contained in this Article."

SECTION 6. G.S. 152-7(6) reads as rewritten:

"**§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.**

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

...

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in ~~G.S. 130-98~~ G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

...."

SECTION 7. G.S. 140-5.17 is repealed.

SECTION 8. 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 II Committee

FROM: General Statutes Commission

DATE: March 19, 2007

RE: Senate Bill 613 (General Statutes Comm. Technical Corrections)

General Comments

This bill contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments correct redlining errors, update statutory references, and delete an obsolete provision.

Specific Comments

Sections 1 and 2. S.L. 1997-433, s. 5.1, made several amendments to G.S. 110-142.1, using the coded bill drafting format. In the process, an extra "the" was inserted in the second sentence of subsection (i), and a necessary comma was not reinserted in the second sentence of subsection (l). Section 1 deletes the extra "the" and Section 2 inserts the missing comma.

Sections 3, 4, 5, and 6. Sections 3 through 6 amend G.S. 70-27(b), 70-30, 70-39, and 152-7(6), respectively, to replace a cross-reference to former G.S. 130-198 with a reference to the current statute (G.S. 130A-383). Former G.S. 130-198 dealt with the duty to notify the county medical examiner of killings, suicides, unnatural deaths, and discovered human remains. It was repealed when former Chapter 130 was replaced with current Chapter 130A of the General Statutes by Chapter 891 of the 1983 Session Laws. G.S. 130A-383 is the successor statute.

Section 7. This section repeals G.S. 140-5.17, which is now obsolete. G.S. 140-5.17 provides that nothing in Article 1B of Chapter 140 of the General Statutes (the North Carolina Museum of Art) eliminates or reduces the powers and duties of the former State Art Museum Building Commission. That Commission, however, is now defunct; its organic legislation was repealed by S.L. 2000-140, s. 78, rendering G.S. 140-5.17 obsolete.

Section 8. This section is the effective date section for the bill ("when it becomes law").

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 22, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham

Presentation from the Sentencing Commission

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, March 22, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham

Presentations **North Carolina Sentencing Commission**

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 22, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 22, 2007, with eight members present. Senator Hartsell introduced Senate Page Jessica Weaver, and thanked her for her service.

SB 92 (Dangerous Dogs/Liability Insurance.) Senator Hartsell noted that this bill will be taken up at a later time.

Ms. Susan Katzenelson, Executive Director, and Mr. John Madler, Associate Director for Policy Analysis, Staff Attorney for the North Carolina Sentencing and Policy Advisory Commission were introduced by Senator Hartsell. Mr. Madler was recognized to make a presentation to the Judiciary II Committee. His presentation regarded classification of offences and sentencing with questions and discussion from the committee.

Senator Hartsell noted that the presentation and discussion will continue at the next meeting of the committee on March 27, 2007.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

STRUCTURED SENTENCING

P.O. Box 2472
Raleigh, NC 27602
919/789-3684

www.nccourts.org/courts/crs/councils/spac

The Honorable W. Erwin Spainhour, chairman
Susan Katzenelson, Executive Director

PRINCIPLES OF STRUCTURED SENTENCING

Truthful Sentencing Policies

Sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served.

Consistent and Certain Sentencing Policies

Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.

Rational Sentencing Policies

Sentence should be proportional to the severity of the crime as measured by the harm to the victim and the offender's prior record.

Priorities Set for the Use of Correctional Resources

Prisons and jails should be reserved for violent and repeat offenders, and community-based programs should be used for nonviolent offenders with little or no prior record.

Balance Between Sentencing Policies and Correctional Resources

Sentencing Policies should be supported by adequate prison, jail, and community resources.

***** Effective for Offenses Committed on or after 12/1/95 *****

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Points	II 1-4 Points	III 5-8 Points	IV 9-14 Points	V 15-18 Points	VI 19+ Points
A	Death or Life Without Parole					
B1	A *240 - 300* **192 - 240** *144 – 192*	A *288 - 360* **230 - 288** *173 – 230*	A *336 - 420* **269 - 336** *202 – 269*	A *384 - 480* **307 - 384** *230 – 307*	A *Life Without Parole* **346 - 433** *260 – 346*	A *Life Without Parole* **384 - 480** *288 - 384*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *189 - 237* **151 - 189** *114 - 151*	A *220 - 276* **176 - 220** *132 - 176*	A *251 - 313* **201 - 251** *151 - 201*	A *282 - 353* **225 - 282** *169 - 225*	A *313 - 392* **251 - 313** *188 - 251*
C	A *73 – 92* **58 - 73** *44 - 58*	A *100 – 125* **80 - 100** *60 - 80*	A *116 – 145* **93 - 116** *70 - 93*	A *133 - 167* **107 - 133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101 - 135*
D	A *64 - 80* **51 - 64** *38 - 51*	A *77 - 95* **61 - 77** *46 - 61*	A *103 - 129* **82 - 103** *61 - 82*	A *117 - 146* **94 - 117** *71 - 94*	A *133 - 167* **107 - 133** *80 - 107*	A *146 - 183* **117 - 146** *88 - 117*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *34 - 42* **27 - 34** *20 - 27*	A *46 - 58* **37 - 46** *28 - 37*	A *53 - 66* **42 - 53** *32 - 42*	A *59 - 74* **47 - 59** *35 - 47*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *15 - 19* **12 - 15** *9 - 12*	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *20 - 25* **16 - 20** *12 - 16*	A *21 - 26* **17 - 21** *13 - 17*	A *29 - 36* **23 - 29** *17 - 23*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 - 10** *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

A – Active Punishment **I – Intermediate Punishment** **C – Community Punishment**
Numbers shown are in months and represent the range of minimum sentences

Revised: 08-04-95

MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 month[illegible] or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-39[illegible]
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-3[illegible]
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-39[illegible]
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-5[illegible]
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-5[illegible]
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-59
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

CLASSIFICATION OF A SAMPLE OF OFFENSES
(Effective 12/1/06)

CLASS A FELONIES	Maximum Punishment of Death or Life Without Parole
First Degree Murder. (14-17)	
CLASS B1 FELONIES	**Maximum Punishment of Life Without Parole**
First Degree Rape. (14-27.2)	First Degree Sexual Offense. (14-27.4)
CLASS B2 FELONIES	**Maximum Punishment of 480 Months**
Second Degree Murder. (14-17)	
CLASS C FELONIES	**Maximum Punishment of 261 Months**
Habitual Felon. (14-7.6)	Assault W/D/W/I/K/I/S/I. (14-32(a))
Second Degree Rape. (14-27.3)	First Degree Kidnapping. (14-39)
Second Degree Sexual Offense. (14-27.5)	Embezzlement (amount involved $100,000 or more). (14-90)
CLASS D FELONIES	**Maximum Punishment of 229 Months**
Voluntary Manslaughter. (14-18)	First Degree Arson. (14-58)
Malicious Use of Explosive or Incendiary. (14-49(a))	Armed Robbery. (14-87)
First Degree Burglary. (14-51)	Sell or Deliver a Controlled Substance to a Person Under 16 But More than 13 Years of Age. (90-95(e)(5))
CLASS E FELONIES	**Maximum Punishment of 98 Months**
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian). (14-27.7)	Second Degree Kidnapping. (14-39)
Assault W/D/W/I/S/I. (14-32(b))	Malicious Use of Explosive or Incendiary. (14-49)
Assault W/D/W/I/K. (14-32(c))	Child Abuse I/S/I. (14-318.4)
Discharging Weapon Into Occupied Property. (14-34.1)	Death by Vehicle. (20-141.4)
Assault with a Firearm on a Law Enforcement Officer. (14-34.5)	Sell or Deliver a Controlled Substance Within 300 Feet of a School. (90-95(e)(8))
CLASS F FELONIES	**Maximum Punishment of 59 Months**
Involuntary Manslaughter. (14-18)	Burning of Certain Other Buildings. (14-62)
Assault Inflicting Serious Bodily Injury. (14-32.4)	Participating in Prostitution of a Minor. (14-190.19)
Assault W/D/W on Governmental Officer of Employee. (14-34.2)	Taking Indecent Liberties with Children. (14-202.1)
Assault I/S/I on a Law Enforcement Officer. (14-34.7)	Possess Weapon of Mass Destruction. (14-288.8)
Felonious Restraint. (14-43.3)	Habitual Impaired Driving. (20-138.5)
CLASS G FELONIES	**Maximum Punishment of 44 Months**
Second Degree Burglary. (14-51)	Financial Identity Fraud. (14-113.20)
Second Degree Arson. (14-58)	Possession of Firearms, etc., by Felon. (14-415.1)
Common Law Robbery. (14-87.1)	Sale of a Schedule I or II Controlled Substance. (90-95(a)(1))
CLASS H FELONIES	**Maximum Punishment of 30 Months**
Habitual Misdemeanor Assault. (14-33.2)	Obtaining Property by False Pretenses (amount involved less than $100,000). (14-100)
Breaking or Entering Buildings. (14-54(a))	Intimidating/Interfering with Witnesses. (14-226)
Fraudulently Setting Fire to Dwelling House. (14-65)	Hit and Run Involving Personal Injury/Death. (20-166(a))
Possessing Stolen Goods Worth More than $1,000. (14-71.1)	Sale of a Schedule III, IV, V, or VI Controlled Substance. (90-95(a)(1))
Larceny of Property Worth More than $1,000. (14-72)	Possession W/I/M/S/D Cocaine. (90-95(a)(1))
Embezzlement (amount involved less than $100,000). (14-90)	Escaping From State Prison System (felon). (148-45(b))

CLASS I FELONIES	Maximum Punishment of 15 Mont
Breaking or Entering Motor Vehicles. (14-56)	Possession W/I/M/S/D Marijuana. (90-95(a)(1))
Financial Transaction Card Theft. (14-113.9)	Possess Cocaine. (90-95(a)(3))
Forgery of Notes, Checks, Securities. (14-119)	Maintain Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance. (90-108(a)(7), (b))
Uttering Forged Paper or Instrument. (14-120)	Obtain a Controlled Substance by Fraud. (90-108(a)(10), (b))
CLASS A1 MISDEMEANORS	**Maximum Punishment of 150 Days**
Assault Inflicting Serious Injury or Using a Deadly Weapon. (14-33(c)(1))	Assault on a State Officer or Employee. (14-33(c)(4))
Assault on a Female. (14-33(c)(2))	Assault by Pointing a Gun. (14-34)
Assault on a Child Under 12 Years of Age. (14-33(c)(3))	Violation of a Valid Protective Order. (50B-4.1)
CLASS 1 MISDEMEANORS	**Maximum Punishment of 120 Days**
Breaking or Entering Buildings. (14-54(b))	Willful Injury to Real Property. (14-127)
Larceny of Property Worth $1,000 or Less. (14-72)	Communicating Threats. (14-277.1)
Unauthorized Use of a Motor Vehicle. (14-72.2)	Possession of Drug Paraphernalia. (90-113.22)
Worthless Check/Closed Account. (14-107(4))	Misrepresentation to Obtain Employment Security Benefits. (96-18)
CLASS 2 MISDEMEANORS	**Maximum Punishment of 60 Days**
Simple Assault/Assault and Battery. (14-33(a))	Failure to Return Rental Property. (14-167)
Obtaining Property in Return for Worthless Check. (14-106)	Using Profane, Indecent or Threatening Language to Any Person Over Telephone. (14-196)
Worthless Check/$2,000 or Less. (14-107(1))	Resisting Officers. (14-223)
First Degree Trespass. (14-159.12)	Carrying Concealed Weapons. (14-269)
Willful Injury to Personal Property. (14-160(a))	Disorderly Conduct. (14-288.4)
CLASS 3 MISDEMEANORS	**Maximum Punishment of 20 Days**
Concealment of merchandise in mercantile establishments (first conviction). (14-72.1)	Operate Motorboat Without Lifesaving Device. (75A-6)
Second Degree Trespass. (14-159.13)	Hunting Without a License. (113-270.2)
Intoxicated and Disruptive in Public. (14-444)	Fishing Without a License. (113-271)
Unsealed Wine/Liquor in Passenger Area. (18B-401)	Possess Marijuana (1/2 ounce or less). (90-95(a)(3))

CONSPIRACY to commit an offense is classified as one class lower than the offense the person conspired to commit. (14-2.4)

ATTEMPT to commit an offense is classified as one class lower than the offense the person attempted to commit. (14-2.5)

SOLICITATION to commit an offense is classified as two classes lower than the offense the person solicited the other person to commit. (14-2.6)

ACCESSORY BEFORE THE FACT punishable as the principal felon. (14-5.2)

ACCESSORY AFTER THE FACT punishable as two classes lower than the felony the principal felon committed. (14-7)

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		POINTS
	Prior Felony Class A Conviction	x 10	
	Prior Felony Class B1 Conviction	x 9	
	Prior Felony Class B2 or C or D Conviction	x 6	
	Prior Felony Class E or F or G Conviction	x 4	
	Prior Felony Class H or I Conviction	x 2	
	Prior Misdemeanor Class A1 or 1 Conviction*, Prior Impaired Driving Conviction, or Prior Impaired Driving in a Commercial Vehicle Conviction	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in any prior offense, whether or not the prior offense was used in determining prior record level		+ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or ©) while on escape		+ 1	
		TOTAL	

** Class 1 misdemeanor offenses under Chapter 20 are not assigned any points except for misdemeanor death by vehicle [G.S. 20-141.4(a)(2)]*

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL _____

DISPOSITIONS

ACTIVE PUNISHMENT

An active punishment requires that the offender be sentenced to the custody of the Department of Correction to serve the minimum and up to the maximum sentence imposed by the court.

INTERMEDIATE PUNISHMENT

An intermediate punishment requires a sentence of supervised probation with at least one of the following conditions:

1. Special Probation as defined in G.S. §15A-1351(a) which includes a period of active confinement followed by a period of probation. (This sanction is sometimes referred to as a split sentence.)
2. Residential Program assignment that requires the offender to reside in a facility for a specified period of time and to participate in activities such as counseling, treatment, social skills training, or employment training at the residential facility or other specified locations.
3. House Arrest With Electronic Monitoring assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the conditions electronically.
4. Intensive Probation assignment that requires the offender to submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. §143B-262(c) and to comply with the rules adopted for that program.
5. Day Reporting Center assignment that requires the offender to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.
6. Drug Treatment Court Program assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

An intermediate punishment may also include a fine, restitution, or any other conditions of probation which are considered community punishments.

COMMUNITY PUNISHMENT

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. Community punishments may include, but are not limited to, one or more of the following:

1. Supervised or unsupervised probation.
2. Outpatient drug/alcohol treatment.
3. Community service.
4. Restitution.
5. Fines.
6. Any other authorized condition of probation except those defined as intermediate punishments.

Effective for Offenses Committed on or after 12/1/95

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days **C/I/A**	1 - 75 days **C/I/A**	1 - 150 days **C/I/A**
1	1 - 45 days **C**	1 - 45 days **C/I/A**	1 - 120 days **C/I/A**
2	1 - 30 days **C**	1 - 45 days **C/I**	1 - 60 days **C/I/A**
3	1 - 10 days **C**	1 - 15 days **C/I**	1 - 20 days **C/I/A**

A - Active Punishment **I - Intermediate Punishment** **C - Community Punishment**

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 22, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Russ Dubisky	IFNC
Joe Stewart	IFNC
Jeff Henri; McClees	McClees Consult.
John McKay	Gov Office
~~Alandra White~~	Gov. Office
Judy Chriscoe	Sen. Stan Bingham's LA

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 27, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham

Presentation: North Carolina Sentencing Commission

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, March 27, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham

Presentations: North Carolina Sentencing Commission

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 27, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 27, 2007, with thirteen members present. Senator Hartsell welcomed Pages McKinley Cobb and Vincent Cannon and thanked them for their service.

Senator Hartsell recognized Mr. John Madler, Associate Director for Policy Analysis/Staff Attorney representing the North Carolina Sentencing and Policy Advisory Commission, and invited him to continue with the explanation and discussion from the previous meeting. Ms. Susan Katzenelson, also representing the North Carolina Sentencing and Policy Advisory Commission, joined him with his explanation and the discussion.

Senator Hartsell introduced and welcomed Senator Don East as a new member of the Committee.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 27, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Dennis McClees	McClees Consulting, Inc.
Amy Sims	DENR
Joe McClees	McClees Consulting
Aimee Wall	UNC IOG
Mike McLaughlin	NC Academy of Trial Lawyers
[illegible]	4-H Granville Co
Paul G. Barker	4-H Granville Co
[illegible]	4-H Granville Co
Daniel L Barker	4-H Granville Co
Selma Barker	4-H leader Granville Co & Homeschool
Cindy Hamrick	4-H Granville Homeschool

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 29, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Vicky Hamrick	Granville Co 4H / Homeschool
Susan Valaur	Nationwide
Chloe Gossage	Civitas

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 92

Short Title:	Dangerous Dogs/Liability Insurance.	(Public)
Sponsors:	Senators Bingham; Berger of Rockingham, Boseman, Garrou, Hagan, Jones, Purcell, Rand, and Stevens.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF DANGEROUS AND POTENTIALLY DANGEROUS DOGS TO ACQUIRE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 67 of the General Statutes is amended by adding a new section to read:

"**§ 67-4.6. Owner required to have insurance.**

(a) Within 30 days of the determination by animal control authorities that a dog is a dangerous dog or a potentially dangerous dog under G.S. 67-4.1(a), the owner of the dog shall obtain, and upon demand present to an animal control officer evidence of, a policy of insurance in the amount of at least one hundred thousand dollars ($100,000) issued by an insurer authorized to do business in this State insuring the owner of the dog against liability for any personal injuries inflicted or other damage caused by the dog.

(b) Failure to obtain the insurance required by this section or to produce evidence of that insurance upon demand of an animal control officer is a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 92
PROPOSED COMMITTEE SUBSTITUTE S92-CSRC-7 [v.8]

3/26/2007 6:37:16 PM

Short Title: Dangerous Dogs/Financial Responsibility. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF SOME DANGEROUS DANGEROUS DOGS TO PROVIDE PROOF OF FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 67-4.1 reads as rewritten:

"**§ 67-4.1. ~~Definitions and procedures.~~Definitions; exclusions.**

(a) ~~As used in this Article, unless~~Unless the context clearly requires otherwise and except as modified in subsection (b) of this ~~section, the term:~~section, the following terms apply in this Article:

(1) ~~"Dangerous dog" means~~Dangerous dog. - A dog to which one or more of the following applies:

a. ~~A dog that:~~

~~1.~~ ~~Without~~ The dog without provocation has killed or inflicted severe injury on a ~~person; or~~person.

~~2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed in subdivision (2) of this subsection.~~

b. ~~Any dog~~ The dog is owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

c. A dangerous dog board determines that the dog has done one or more of the following:

1. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

2. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property.

3. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

~~(2) "Potentially dangerous dog" means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:~~

~~a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or~~

~~b. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or~~

~~c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.~~

(2a) Dangerous dog board or board. – The person or entity designated under G.S. 67-4.1A(a).

(3) ~~"Owner" means any~~ Owner. – Any person or legal entity that has a possessory property right in a dog.

(4) ~~"Owner's real property" means any~~ Owner's real property. – Any real property owned or leased by the owner of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

(5) ~~"Severe injury" means any~~ Severe injury. – Any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

(6) Surety. – As defined in G.S. 15A-531(8).

(b) The provisions of this Article do not apply ~~to:~~to any of the following:

(1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official ~~duties;~~duties.

(2) A dog being used in a lawful ~~hunt;~~hunt.

(3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the ~~dog; or~~dog.

(4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

~~(c) The county or municipal authority responsible for animal control shall designate a person or a Board to be responsible for determining when a dog is a "potentially dangerous dog" and shall designate a separate Board to hear any appeal. The person or Board making the determination that a dog is a "potentially dangerous~~

~~dog" must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.~~"

SECTION 2. Article 1A of Chapter 67 of the General Statutes is amended by adding two new sections to read:

"**§ 67-4.1A. Dangerous dog board.**

(a) The county or municipal authority responsible for animal control shall designate a dangerous dog board. The board shall be responsible for determining whether a dog is a dangerous dog as defined in G.S. 67-4.1(a)(3). The board may make a determination that a dog is a dangerous dog under G.S. 67-4.1(a)(1) or (a)(2). Notwithstanding any other provision of law and regardless of whether a dangerous dog board has made any determination, a dog shall be considered dangerous for purposes of this Article if the provisions of either G.S. 67-4.1(a)(1) or (a)(2) apply to the dog.

(b) The board shall provide written notification to the owner at least three days prior to making any determination under this Article. The notification shall state the reasons the board is considering making a determination. If a board determines that a dog is a dangerous dog, it shall provide the owner with written notification of the reasons for that determination and a copy of this Article.

(c) The county or municipal authority responsible for animal control shall also designate a separate Board to hear any appeal. The owner may appeal a determination by a dangerous dog board by filing written objections with the appellate Board within three days of the determination. The appellate Board shall schedule a hearing within 10 days of the filing of the objection.

(d) The owner may appeal from the final decision of the appellate Board by filing a notice of appeal and petition for review with the superior court within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.

"**§ 67-4.1B. Proof of financial responsibility.**

(a) Upon a determination by a dangerous dog board that a dog is dangerous as defined in G.S. 67-4.1(a)(1), G.S. 67-4.1(a)(2), or G.S. 67-4.1(a)(3)a., the board shall require from the dog owner proof of the owner's ability to indemnify persons suffering damage as result of personal injuries inflicted or other damage caused by the dangerous dog. The amount of financial responsibility shall be $5,000. Proof of financial responsibility may be demonstrated by any of the following methods:

(1) A cash deposit placed in escrow with the animal control board and evidenced by a receipt issued by the animal control board.
(2) A bond by at least one solvent surety.
(3) A policy of liability insurance.

(b) The deposit, bond, or policy of liability insurance shall be conditioned for payment for any personal injuries inflicted or other damage subsequently caused by the dangerous dog. Nothing in this section shall limit the strict liability of an owner under G.S. 67-4.4 for damages caused by a dangerous dog. An owner who is required to provide proof of financial responsibility under this section shall upon demand present to an animal control officer evidence of that proof.

(c) The owner shall provide to the animal control board the required proof within five days of the board determining that the dog is dangerous under subsection (a) of this section. An appeal under G.S. 67-4.1A(c) of the board's determination that a dog is dangerous shall not stay the owner's obligation to provide proof of financial responsibility.

(c) Failure by the owner to provide proof of financial responsibility as required in this section or failure by the owner to produce evidence of the required proof upon demand by an animal control officer shall be grounds for the dangerous dog board to order that the dog be taken into custody and destroyed."

SECTION 3. This act becomes effective October 1, 2007, and applies to determinations made by dangerous dog boards on or after that date.

SENATE BILL 92:
Dangerous Dogs/Financial Responsibility

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 26, 2007
Introduced by:	Sen. Bingham	**Summary by:**	Kory Goldsmith Committee Co-Counsel
Version:	PCS to First Edition S92-CSRC-7		

SUMMARY: SB92 would require owners of certain dogs that have been determined to be dangerous to provide proof of financial responsibility in the amount of $5,000. Proof could be in the form of a cash deposit, a bond, or an insurance liability policy. If the owner did not provide proof of financial responsibility, the dog would be taken into custody and destroyed.

The Proposed Committee Substitute substantially rewrites the original bill and makes clarifying and technical revisions to existing law.

CURRENT LAW: Article 1A of Chapter 67 governs dangerous dogs.[1] A dangerous dog is a dog that has: (1) without provocation killed or inflicted severe injury to a person, or (2) is designated as a potentially dangerous animal, or (3) is owned primarily for the purpose of dog fighting or trained for dog fighting.[2] G.S. 67-4.1(c) provides that the county or municipal authority responsible for animal control may designate a separate person or Board to be responsible for determining when a dog is a "potentially dangerous dog". A potentially dangerous dog is a dog that has been determined to have: (1) inflicted a bite to a person causing broken bones or disfiguring lacerations; (2) killed or inflected severe injury upon domestic animal; or (3) approached a person when the dog was not on its owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

The Article does not apply to a dog: (1) being used by law enforcement to carry out the officer's official duties; (2) being used in a lawful hunt; (3) where the injury inflicted by the dog to a domestic animal occurred as the dog was working as a hunting dog, herding dog, or predator control dog; or (4) where the injury inflicted by the dog was sustained by a person who was committing a willful trespass, or tormenting the dog or attempting to commit a crime.[3]

It is unlawful for the owner of a dangerous dog to leave the dog unattended on the owner's real property unless the dog is confined indoors or in a securely enclosed and locked pen. It is also unlawful to allow a dangerous dog to leave the owner's real property unless the dog is leased and muzzled. A violation of these provisions is a Class 3 misdemeanor.[4] The owner of a dangerous dog that inflicts physical injuries requiring medical treatment in excess of $100 is guilty of a Class 1 misdemeanor.[5] The owner is strictly liable for any injuries or property damage caused by the dog.[6]

BILL ANALYSIS:

Section 1 rewrites the definitions section of Article 1A of Chapter 67 to make them conform with current drafting conventions and to clarify that a dog that has been determined to be potentially

[1] G.S. 67-4.1 to 4.5.
[2] G.S. 67-4.1(a)(1) and (2).
[3] G.S. 67-4.1(b)
[4] G.S. 67-4.2
[5] G.S. 67-4.3
[6] G.S. 67-4.4

dangerous is a dangerous dog. The section also creates a definition for the board or person that is responsible for determining that a dog is dangerous and a definition for a surety.[7]

Section 2 creates two new sections in Article 1A of Chapter 67:

G.S. 67-4.1A restates existing law that the county or municipal authority responsible for animal control must designate a board or person that is responsible for determining whether a dog is a dangerous dog. It specifies certain procedural requirements and restates the existing appeals process. It also requires that if a dangerous dog board determines a dog is dangerous, the board must provide the owner with written notification of the grounds for the determination and a copy of Article 1A of Chapter 67.[8] Current law places a number of responsibilities upon an owner of a dangerous dog and also makes the owner strictly liable for damages caused b the dog.

G.S. 67-4.1A creates a requirement that if a dangerous dog board determines that a dog is dangerous for any of the following reasons, the owner of the dog must provide proof of financial responsibility or the dog will be destroyed. The requirement would apply if the board determines the dog:

- Killed or inflicted severe injury on a person without having first been provoked.
- Is owned or harbored for the purpose of dog fighting or trained for dog fighting.
- Has inflicted a bite on a person that resulted in broken bones, disfiguring lacerations or that required cosmetic surgery or hospitalization.

Proof of financial responsibility could be evidenced by any of the following:

- A cash deposit with the dangerous dog board.
- A bond issued by a solvent surety.
- A policy of liability insurance

The cash deposit, bond, or policy of insurance would be available to pay for personal injury damages or damage to property caused by the dangerous dog. Despite having proof of financial responsibility, the owner would still be strictly liable for any damages in excess of the required $5,000.

EFFECTIVE DATE: The act would become effective October 1, 2007, and apply to determinations made on or after that date.

S0092e1-SMRC-CSRC-7

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[7] A surety is defined as one of the following:
a. An insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.
b. A professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.
c. An accommodation bondsman, when a bail bond is executed by a person who is at least 18 years of age, is a resident of the State, and who receives no financial consideration for providing the bond.

[8] A copy of Article 1A is attached.

Article 1A.

Dangerous Dogs.

§ 67-4.1. Definitions and procedures.

(a) As used in this Article, unless the context clearly requires otherwise and except as modified in subsection (b) of this section, the term:

(1) "Dangerous dog" means

a. A dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed in subdivision (2) of this subsection.

b. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

(2) "Potentially dangerous dog" means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

b. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or

c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

(3) "Owner" means any person or legal entity that has a possessory property right in a dog.

(4) "Owner's real property" means any real property owned or leased by the owner of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

(5) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

(b) The provisions of this Article do not apply to:

(1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official duties;

(2) A dog being used in a lawful hunt;

(3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog; or

(4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was

tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(c) The county or municipal authority responsible for animal control shall designate a person or a Board to be responsible for determining when a dog is a "potentially dangerous dog" and shall designate a separate Board to hear any appeal. The person or Board making the determination that a dog is a "potentially dangerous dog" must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.

§ 67-4.2. Precautions against attacks by dangerous dogs.

(a) It is unlawful for an owner to:

(1) Leave a dangerous dog unattended on the owner's real property unless the dog is confined indoors, in a securely enclosed and locked pen, or in another structure designed to restrain the dog;

(2) Permit a dangerous dog to go beyond the owner's real property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled.

(b) If the owner of a dangerous dog transfers ownership or possession of the dog to another person (as defined in G.S. 12-3(6)), the owner shall provide written notice to:

(1) The authority that made the determination under this Article, stating the name and address of the new owner or possessor of the dog; and

(2) The person taking ownership or possession of the dog, specifying the dog's dangerous behavior and the authority's determination.

(c) Violation of this section is a Class 3 misdemeanor.

§ 67-4.3. Penalty for attacks by dangerous dogs.

The owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars ($100.00) shall be guilty of a Class 1 misdemeanor.

§ 67-4.4. Strict liability.

The owner of a dangerous dog shall be strictly liable in civil damages for any injuries or property damage the dog inflicts upon a person, his property, or another animal.

§ 67-4.5. Local ordinances.

Nothing in this Article shall be construed to prevent a city or county from adopting or enforcing its own program for control of dangerous dogs.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

STRUCTURED SENTENCING

P.O. Box 2472
Raleigh, NC 27602
919/789-3684

www.nccourts.org/courts/crs/councils/spac

The Honorable W. Erwin Spainhour, chairman
Susan Katzenelson, Executive Director

PRINCIPLES OF STRUCTURED SENTENCING

Truthful Sentencing Policies

Sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served.

Consistent and Certain Sentencing Policies

Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.

Rational Sentencing Policies

Sentence should be proportional to the severity of the crime as measured by the harm to the victim and the offender's prior record.

Priorities Set for the Use of Correctional Resources

Prisons and jails should be reserved for violent and repeat offenders, and community-based programs should be used for nonviolent offenders with little or no prior record.

Balance Between Sentencing Policies and Correctional Resources

Sentencing Policies should be supported by adequate prison, jail, and community resources.

***** Effective for Offenses Committed on or after 12/1/95 *****

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Points	II 1-4 Points	III 5-8 Points	IV 9-14 Points	V 15-18 Points	VI 19+ Points
A	Death or Life Without Parole					
B1	A *240 - 300* **192 - 240** *144 – 192*	A *288 - 360* **230 - 288** *173 – 230*	A *336 - 420* **269 - 336** *202 – 269*	A *384 - 480* **307 - 384** *230 – 307*	A *Life Without Parole* **346 - 433** *260 – 346*	A *Life Without Parole* **384 - 480** *288 - 384*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *189 - 237* **151 - 189** *114 - 151*	A *220 - 276* **176 - 220** *132 - 176*	A *251 - 313* **201 - 251** *151 - 201*	A *282 - 353* **225 - 282** *169 - 225*	A *313 - 392* **251 - 313** *188 - 251*
C	A *73 – 92* **58 - 73** *44 - 58*	A *100 – 125* **80 - 100** *60 - 80*	A *116 – 145* **93 - 116** *70 - 93*	A *133 - 167* **107 - 133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101 - 135*
D	A *64 - 80* **51 - 64** *38 - 51*	A *77 - 95* **61 - 77** *46 - 61*	A *103 - 129* **82 - 103** *61 - 82*	A *117 - 146* **94 - 117** *71 - 94*	A *133 - 167* **107 - 133** *80 - 107*	A *146 - 183* **117 - 146** *88 - 117*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *34 - 42* **27 - 34** *20 - 27*	A *46 - 58* **37 - 46** *28 - 37*	A *53 - 66* **42 - 53** *32 - 42*	A *59 - 74* **47 - 59** *35 - 47*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *15 - 19* **12 - 15** *9 - 12*	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *20 - 25* **16 - 20** *12 - 16*	A *21 - 26* **17 - 21** *13 - 17*	A *29 - 36* **23 - 29** *17 - 23*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 - 10** *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

A – Active Punishment **I – Intermediate Punishment** **C – Community Punishment**
Numbers shown are in months and represent the range of minimum sentences

Revised: 08-04-95

MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-3
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-3
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-59
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

CLASSIFICATION OF A SAMPLE OF OFFENSES
(Effective 12/1/06)

CLASS A FELONIES	Maximum Punishment of Death or Life Without Parole
First Degree Murder. (14-17)	
CLASS B1 FELONIES	**Maximum Punishment of Life Without Parole**
First Degree Rape. (14-27.2)	First Degree Sexual Offense. (14-27.4)
CLASS B2 FELONIES	**Maximum Punishment of 480 Months**
Second Degree Murder. (14-17)	
CLASS C FELONIES	**Maximum Punishment of 261 Months**
Habitual Felon. (14-7.6)	Assault W/D/W/I/K/I/S/I. (14-32(a))
Second Degree Rape. (14-27.3)	First Degree Kidnapping. (14-39)
Second Degree Sexual Offense. (14-27.5)	Embezzlement (amount involved $100,000 or more). (14-90)
CLASS D FELONIES	**Maximum Punishment of 229 Months**
Voluntary Manslaughter. (14-18)	First Degree Arson. (14-58)
Malicious Use of Explosive or Incendiary. (14-49(a))	Armed Robbery. (14-87)
First Degree Burglary. (14-51)	Sell or Deliver a Controlled Substance to a Person Under 16 But More than 13 Years of Age. (90-95(e)(5))
CLASS E FELONIES	**Maximum Punishment of 98 Months**
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian). (14-27.7)	Second Degree Kidnapping. (14-39)
Assault W/D/W/I/S/I. (14-32(b))	Malicious Use of Explosive or Incendiary. (14-49)
Assault W/D/W/I/K. (14-32(c))	Child Abuse I/S/I. (14-318.4)
Discharging Weapon Into Occupied Property. (14-34.1)	Death by Vehicle. (20-141.4)
Assault with a Firearm on a Law Enforcement Officer. (14-34.5)	Sell or Deliver a Controlled Substance Within 300 Feet of a School. (90-95(e)(8))
CLASS F FELONIES	**Maximum Punishment of 59 Months**
Involuntary Manslaughter. (14-18)	Burning of Certain Other Buildings. (14-62)
Assault Inflicting Serious Bodily Injury. (14-32.4)	Participating in Prostitution of a Minor. (14-190.19)
Assault W/D/W on Governmental Officer of Employee. (14-34.2)	Taking Indecent Liberties with Children. (14-202.1)
Assault I/S/I on a Law Enforcement Officer. (14-34.7)	Possess Weapon of Mass Destruction. (14-288.8)
Felonious Restraint. (14-43.3)	Habitual Impaired Driving. (20-138.5)
CLASS G FELONIES	**Maximum Punishment of 44 Months**
Second Degree Burglary. (14-51)	Financial Identity Fraud. (14-113.20)
Second Degree Arson. (14-58)	Possession of Firearms, etc., by Felon. (14-415.1)
Common Law Robbery. (14-87.1)	Sale of a Schedule I or II Controlled Substance. (90-95(a)(1))
CLASS H FELONIES	**Maximum Punishment of 30 Months**
Habitual Misdemeanor Assault. (14-33.2)	Obtaining Property by False Pretenses (amount involved less than $100,000). (14-100)
Breaking or Entering Buildings. (14-54(a))	Intimidating/Interfering with Witnesses. (14-226)
Fraudulently Setting Fire to Dwelling House. (14-65)	Hit and Run Involving Personal Injury/Death. (20-166(a))
Possessing Stolen Goods Worth More than $1,000. (14-71.1)	Sale of a Schedule III, IV, V, or VI Controlled Substance. (90-95(a)(1))
Larceny of Property Worth More than $1,000. (14-72)	Possession W/I/M/S/D Cocaine. (90-95(a)(1))
Embezzlement (amount involved less than $100,000). (14-90)	Escaping From State Prison System (felon). (148-45(b))

CLASS I FELONIES	Maximum Punishment of 15 Mon
Breaking or Entering Motor Vehicles. (14-56)	Possession W/I/M/S/D Marijuana. (90-95(a)(1))
Financial Transaction Card Theft. (14-113.9)	Possess Cocaine. (90-95(a)(3))
Forgery of Notes, Checks, Securities. (14-119)	Maintain Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance. (90-108(a)(7), (b))
Uttering Forged Paper or Instrument. (14-120)	Obtain a Controlled Substance by Fraud. (90-108(a)(10), (b))
CLASS A1 MISDEMEANORS	**Maximum Punishment of 150 Days**
Assault Inflicting Serious Injury or Using a Deadly Weapon. (14-33(c)(1))	Assault on a State Officer or Employee. (14-33(c)(4))
Assault on a Female. (14-33(c)(2))	Assault by Pointing a Gun. (14-34)
Assault on a Child Under 12 Years of Age. (14-33(c)(3))	Violation of a Valid Protective Order. (50B-4.1)
CLASS 1 MISDEMEANORS	**Maximum Punishment of 120 Days**
Breaking or Entering Buildings. (14-54(b))	Willful Injury to Real Property. (14-127)
Larceny of Property Worth $1,000 or Less. (14-72)	Communicating Threats. (14-277.1)
Unauthorized Use of a Motor Vehicle. (14-72.2)	Possession of Drug Paraphernalia. (90-113.22)
Worthless Check/Closed Account. (14-107(4))	Misrepresentation to Obtain Employment Security Benefits. (96-18)
CLASS 2 MISDEMEANORS	**Maximum Punishment of 60 Days**
Simple Assault/Assault and Battery. (14-33(a))	Failure to Return Rental Property. (14-167)
Obtaining Property in Return for Worthless Check. (14-106)	Using Profane, Indecent or Threatening Language to Any Person Over Telephone. (14-196)
Worthless Check/$2,000 or Less. (14-107(1))	Resisting Officers. (14-223)
First Degree Trespass. (14-159.12)	Carrying Concealed Weapons. (14-269)
Willful Injury to Personal Property. (14-160(a))	Disorderly Conduct. (14-288.4)
CLASS 3 MISDEMEANORS	**Maximum Punishment of 20 Days**
Concealment of merchandise in mercantile establishments (first conviction). (14-72.1)	Operate Motorboat Without Lifesaving Device. (75A-6)
Second Degree Trespass. (14-159.13)	Hunting Without a License. (113-270.2)
Intoxicated and Disruptive in Public. (14-444)	Fishing Without a License. (113-271)
Unsealed Wine/Liquor in Passenger Area. (18B-401)	Possess Marijuana (1/2 ounce or less). (90-95(a)(3))

CONSPIRACY to commit an offense is classified as one class lower than the offense the person conspired to commit. (14-2.4)

ATTEMPT to commit an offense is classified as one class lower than the offense the person attempted to commit. (14-2.5)

SOLICITATION to commit an offense is classified as two classes lower than the offense the person solicited the other person to commit. (14-2.6)

ACCESSORY BEFORE THE FACT punishable as the principal felon. (14-5.2)

ACCESSORY AFTER THE FACT punishable as two classes lower than the felony the principal felon committed. (14-7)

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		POINTS
	Prior Felony Class A Conviction	x 10	
	Prior Felony Class B1 Conviction	x 9	
	Prior Felony Class B2 or C or D Conviction	x 6	
	Prior Felony Class E or F or G Conviction	x 4	
	Prior Felony Class H or I Conviction	x 2	
	Prior Misdemeanor Class A1 or 1 Conviction*, Prior Impaired Driving Conviction, or Prior Impaired Driving in a Commercial Vehicle Conviction	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in any prior offense, whether or not the prior offense was used in determining prior record level		+ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or ©) while on escape		+ 1	
		TOTAL	

** Class 1 misdemeanor offenses under Chapter 20 are not assigned any points except for misdemeanor death by vehicle [G.S. 20-141.4(a)(2)]*

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL _____

DISPOSITIONS

ACTIVE PUNISHMENT

An active punishment requires that the offender be sentenced to the custody of the Department of Correction to serve the minimum and up to the maximum sentence imposed by the court.

INTERMEDIATE PUNISHMENT

An intermediate punishment requires a sentence of supervised probation with at least one of the following conditions:

1. Special Probation as defined in G.S. §15A-1351(a) which includes a period of active confinement followed by a period of probation. (This sanction is sometimes referred to as a split sentence.)
2. Residential Program assignment that requires the offender to reside in a facility for a specified period of time and to participate in activities such as counseling, treatment, social skills training, or employment training at the residential facility or other specified locations.
3. House Arrest With Electronic Monitoring assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the conditions electronically.
4. Intensive Probation assignment that requires the offender to submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. §143B-262(c) and to comply with the rules adopted for that program.
5. Day Reporting Center assignment that requires the offender to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.
6. Drug Treatment Court Program assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

An intermediate punishment may also include a fine, restitution, or any other conditions of probation which are considered community punishments.

COMMUNITY PUNISHMENT

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. Community punishments may include, but are not limited to, one or more of the following:

1. Supervised or unsupervised probation.
2. Outpatient drug/alcohol treatment.
3. Community service.
4. Restitution.
5. Fines.
6. Any other authorized condition of probation except those defined as intermediate punishments.

Effective for Offenses Committed on or after 12/1/95

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days **C/I/A**	1 - 75 days **C/I/A**	1 - 150 days **C/I/A**
1	1 - 45 days **C**	1 - 45 days **C/I/A**	1 - 120 days **C/I/A**
2	1 - 30 days **C**	1 - 45 days **C/I**	1 - 60 days **C/I/A**
3	1 - 10 days **C**	1 - 15 days **C/I**	1 - 20 days **C/I/A**

A - Active Punishment **I - Intermediate Punishment** **C - Community Punishment**

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to ".... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed a classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property or society; significant injury to person, property or society; and serious injury to person, property or society.

The Commission also assigned misdemeanor offenses to three classes: class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	• Reserved for First Degree Murder
[Reasonably tends to result or does result in]:	
B	• Serious debilitating long-term personal injury
C	• Serious long-term personal injury • Serious long-term or widespread societal injury
D	• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	• Serious personal injury
F	• Significant personal injury • Serious societal injury
G	• Serious property loss: Loss from the person or from the person's dwelling
H	• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal • Personal injury • Significant societal injury
I	• Serious property loss: All other felonious property loss • Societal injury
M	• All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	March 29, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 735	Mediation of Property Insurance Claims.-AB	Senator Dalton
SB 758	Limited Driving Privileges - DWLR.	Senator Kerr
SB 1026	Drivers License Issuance/Expiration Dates.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, March 29, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 735	Mediation of Property Insurance Claims.-AB	Senator Dalton
SB 758	Limited Driving Privileges - DWLR.	Senator Kerr
SB 1026	Drivers License Issuance/Expiration Dates.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

March 29, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on March 29, 2007, with sixteen members present. Senator Hartsell welcomed pages Nathan Snowden, Rachelle Stickel and Ruth Bibby and thanked them for their service

SB 758 (Limited Driving Privileges – DWLR) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Apodaca so moved. All voted and the motion carried. Senator Kerr was recognized to explain the bill. Ms. Kory Goldsmith, Staff Attorney, added additional explanation and Senator Jones spoke on the bill. After a question and answer period, Senator Bingham moved for a favorable report of the proposed committee substitute with a referral to the Finance Committee. All voted and the motion carried.

SB 735 (Mediation of Property Insurance Claims.-AB) Senator Dalton was recognized to explain the bill. Mr. Joe Stewart, Executive Director, of the Insurance Federation of North Carolina spoke on the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 1026 (Drivers License Issuance/Expiration Dates.) As this was Senator Hartsell's bill he requested that Senator Jones chair the meeting for the hearing of the bill. Senator Hartsell was recognized to explain the bill. Senator Hartsell answered the questions of Senators Allran, Dannelly, Bingham, East, Queen and Berger. Mr. Katherine Cotton, representing Duke University Medical Center and Health System, explained the immigration issues. Senator Bingham moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, April 02, 2007

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

FAVORABLE

S.B. **735** Mediation of Property Insurance Claims.-AB
Sequential Referral: None
Recommended Referral: None

S.B. **1026** Drivers License Issuance/Expiration Dates.
Sequential Referral: None
Recommended Referral: None

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

S.B. **758** Limited Driving Privileges - DWLR.
Draft Number: 35354
Sequential Referral: None
Recommended Referral: Finance
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 28, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cathy Matthews	DMV
Brenda Freeman	DMV
Ed Schuetzpeck	UNC-GA
[illegible]	Staff
Wayne Goodwin	DOI
Daniel Baum	Kennedy Covington
Kevin FitzGerald	UNC CH
[illegible]	DMV
[illegible]	IFNC
John McHugh	Gov Office
Johanna Reese	DOT

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **Name of Committee**

May 29, 2007 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Spence	DMV
Matt Osborne	AOC
Michael Bustus	NC State Univ
Catheryn Cotten	Duke University Med Ctr, DHS,
Beth Carmical	NC Association of Internat. Educators P.O. Box 992 Lumberton NC
Andy Willis	UNC-GA
P. Bobby Hall	General Statutes Commission
Susan Valentine	NCDOT
S Henri McClees	McClees Consulting
Rose Williams	Dept. of Insurance
[illegible]	NCICU
Patrick Buffkin	Nelson Mullins

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 29, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paula A. Wolf	El Pueblo, Inc.
Ken D. Hefner	NCSJ
CASANDRA WHITE	GOV. OFFICE
Selena Berrier	Child Fatality Task Force
PAM LANIER	CFTF

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 735*

Short Title:	Mediation of Property Insurance Claims.-AB	(Public)
Sponsors:	Senator Dalton.	
Referred to:	Judiciary II (Criminal).	

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CHANGES IN THE LAWS GOVERNING MEDIATION OF PROPERTY INSURANCE CLAIMS ARISING OUT OF DISASTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-44-70 reads as rewritten:

"**§ 58-44-70. Purpose and scope.**

(a) This Part ~~creates~~ provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of ~~a disaster.~~ an event for which there is a state of disaster declared within 60 days of the event. This Part applies only (i) if a state of disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under G.S. 166A-6; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as ~~amended.~~ amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part.

(b) The procedure ~~established~~ authorized by this Part is available to all first-party claimants who have insurance claims resulting from damage to residential property occurring in this State. This Part does not apply to commercial insurance, motor vehicle insurance, or to liability coverage contained in property insurance policies.

(c) The Commissioner may designate a person, either within the Department or outside of the Department, as the Administrator or other functionary to carry out any of the Commissioner's duties under this Part."

SECTION 2. G.S. 58-44-80(b) reads as rewritten:

"(b) The insurer shall mail ~~a~~ the notice ~~of the right to mediate disputed claims~~ described in subsection (a) of this section to an insured within five days after the time the insured or the Administrator notifies the insurer of a dispute regarding the insured's claim. The following apply:

...."

SECTION 3. G.S. 58-44-95 reads as rewritten:

"**§ 58-44-95. Scheduling of mediation; qualification of mediator.**

(a) The Administrator shall select a mediator and schedule the mediation conference.

(b) In order to be approved, a mediator must be certified by the Dispute Resolution Commission under ~~G.S. 7A-38.2; or, if not, shall be approved at the discretion of the Administrator only if the parties agree on the selected mediator and the proposed mediator is a licensed attorney in North Carolina in good standing with the North Carolina State Bar. A mediator shall not make an award or render a judgment as to the merits of the action.~~ G.S. 7A-38.2."

SECTION 4. G.S. 58-44-100 reads as rewritten:

"**§ 58-44-100. Conduct of the mediation conference.**

(a) The Commissioner may adopt rules, in addition to the provisions of this section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for the conduct of mediation conferences under this Part. The rules adopted by the Commissioner shall include a requirement of the mediator to advise the parties of the mediation process and their rights and duties in the process.

~~(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party shall be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, becomes unduly argumentative or adversarial or continuously disrupts or otherwise inhibits the negotiations, as determined by the mediator.~~

(c) The mediator shall terminate the negotiations if the mediator determines that ~~either party is not negotiating in good faith,~~ either party is unable or unwilling to participate meaningfully in the ~~process,~~ process or upon mutual agreement of the parties.

~~(d) The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.~~

(e) The representative of the insurer attending the conference shall:

(1) Bring, in paper or electronic medium, a copy of the policy and the entire claims file to the conference.

(2) Know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

(f) An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle within the limits of the policy.

(g) The mediator shall be in charge of the conference and ~~will~~ shall establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the ~~standards of professional conduct for mediation~~ Standards of Professional Conduct for Mediators adopted by the ~~American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution,~~ Supreme Court of North Carolina and, where not inconsistent, with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2. The Commissioner may refer any matter regarding the conduct of any mediator to the North Carolina Dispute Resolution Commission.

(h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference. If the Commissioner or an employee or designee of the Commissioner attends a settlement conference, the Commissioner, employee, or designee shall not be compelled to testify about what transpired at the settlement conference or about any other matter in connection with the settlement conference.

(i) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known before the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference."

SECTION 5. G.S. 58-44-60(a) reads as rewritten:

"(a) Every insurer that sells residential or commercial property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

"WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES], [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED AND WHAT IS NOT COVERED."

SECTION 6. This act becomes effective October 1, 2007, and applies to policies issued or renewed on or after that date.

SENATE BILL 735:
Mediation of Property Insurance Claims.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 27, 2007
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 735 is requested by the Department of Insurance to make clarifying and conforming changes to Part 2 of Article 44 of Chapter 58 which deals with the mediation of emergency or disaster-related property insurance claims.***

[As introduced, this bill was identical to H730, as introduced by Reps. Goforth, Holliman, which is currently in House Insurance.]

CURRENT LAW: In 2006, and in response to some of the issues related to property insurance claims in the Gulf Coast area after Hurricane Katrina, the General Assembly passed legislation creating a mediation process for disputed property damage claims resulting from proclaimed disasters. The legislation required that insurers notify insureds of a right to mediate disputed claims.

A disputed claim is defined as any matter where there is a disagreement as to the cause of loss or amount of loss, for which the insurer has denied payment, in part or in whole with respect to claims arising from a disaster. The amount in dispute must be at least $1500, and does not include a denial of coverage for the loss because of exclusions in the policy, terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.

If an insured requests mediation, the Commissioner or the Commissioner's designee (Administrator) shall select a mediator who shall conduct the mediation. The mediation is nonbinding unless all parties specifically agree in writing that the results are binding. If the parties reach a settlement, it shall act as a release of all specific claims that were presented at the mediation conference.

BILL ANALYSIS:

Section 1 amends G.S. 58-44-70 to clarify that a state of disaster may be declared by the General Assembly. It also provides that the mediation procedures of this Part are not triggered unless authorized by the Commissioner of Insurance.

Section 2 amends G.S. 58-44-80(b) to cross reference the notice of right to mediation that is required to be sent by insurers under the preceding subsection. This is a clarification that only one notice to insureds is required.

Section 3 amends G.S. 58-44-95 to provide that only mediators certified by the Dispute Resolution Commission may conduct a mediation conference under this Part.

Section 4 amends G.S. 58-44-100 to remove a requirement that all parties must negotiate in good faith. It also removes the requirement that the party that is responsible for terminating the conference is responsible for paying the mediator's and administrative fees.

Section 5 amends G.S. 58-44-60(a) to clarify that insurers of both residential and commercial property must include in the policy a notice of certain exclusions under the policy.

EFFECTIVE DATE: The act would become effective October 1, 2007 and apply to policies issued or renewed on or after that date.

Kory Goldsmith, counsel to this committee and the House Committee on Insurance, substantially contributed to this summary.

S0735e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 758

Short Title:	Limited Driving Privileges - DWLR.	(Public)
Sponsors:	Senators Kerr, Jones; Albertson, Berger of Rockingham, Clodfelter, Dorsett, Jenkins, Malone, Nesbitt, Stevens, and Weinstein.	
Referred to:	Judiciary II (Criminal).	

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW PERSONS WHO ARE CONVICTED OF CERTAIN DRIVING WHILE LICENSE REVOKED OFFENSES TO OBTAIN A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-20.1. Limited driving privileges for certain revocations.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Limited driving privilege. – A judgment issued by a court authorizing a person with a revoked drivers license to drive under the terms and conditions authorized under this section.

(2) Nonfleet private passenger motor vehicle. – As defined in Article 40 of Chapter 58 of the General Statutes.

(3) Nonstandard working hours. – Any time other than 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(4) Offense involving impaired driving. – As defined in G.S. 20-4.01(24a).

(5) Standard working hours. – Any time from 6:00 A.M. until 8:00 P.M. on Monday through Friday.

(b) Eligibility. – The court, for good cause shown, may issue a limited driving privilege to a person whose North Carolina drivers license is permanently revoked under G.S. 20-28(a) or G.S. 20-28.1 if all of the following conditions apply:

(1) The person has no other current drivers license revocations other than the revocation under G.S. 20-28(a) or G.S. 20-28.1.

(2) The person has complied with the permanent revocation for at least two years immediately preceding the motion for a limited driving privilege.

(3) The person has no unresolved or outstanding motor vehicle offenses or motor vehicle charges or unpaid motor vehicle fines or penalties in this or any other state.

(4) The person has not held a limited driving privilege issued under this section at any time during the three years prior to the filing of the current action.

(c) Ineligibility. – A person shall not be eligible to receive a limited driving privilege under this section if any of the following conditions apply:

(1) The person is eligible to receive a limited driving privilege under any other provision of law.

(2) The person's drivers license was revoked for an offense involving impaired driving at the time the person was charged under G.S. 20-28(a) or G.S. 20-28.1.

(3) The person's drivers license is revoked under G.S. 20-17.1.

(4) The person is not eligible to receive a North Carolina drivers license under G.S. 20-9(f).

(5) The Division has refused to issue a drivers license to the person under G.S. 20-9(e).

(6) The person's drivers license issued by another state has been revoked by that state for any reason or the person's North Carolina drivers license has been revoked under any interstate compact or agreement.

(d) Scope of Privilege. – A limited driving privilege shall restrict the holder to essential driving related to one or more of the purposes listed in this subsection. Any driving that is not related to the purposes authorized in this subsection is unlawful even though done at times and upon routes that may be authorized by the privilege. Except as otherwise provided, all driving shall be for a purpose and done within the restrictions specified in the privilege.

The permissible purposes for a limited driving privilege are: (i) travel to and from the person's employment and in the course of employment; (ii) necessary maintenance of the person's household; and (iii) emergency medical care for the person or for an immediate family member of the person who resides in the same household with the person. Driving related to emergency medical care is authorized at any time and without restriction as to routes.

(e) Jurisdiction. – A motion for a limited driving privilege under this section is separate from any action that resulted in the initial revocation and is a civil action filed in district court in the county of the person's residence as reflected by the Division's records. The costs required under G.S. 7A-305(a3) apply to this action.

(f) Motion. – A motion for a limited driving privilege requested under this section shall include a copy of the person's driving history. The motion shall also include a sworn statement that there are no outstanding or unresolved charges, no unpaid fines, and no violations in this or any other state that could result in the revocation of the person's drivers license, and that the person has complied with the current revocation for the time period required under subdivision (b)(2) of this section

immediately preceding the person's motion for a limited driving privilege under this section.

(g) Employment Driving in Standard Working Hours. – The court may authorize driving for employment-related purposes during standard working hours without specifying the times and routes in which the driving shall occur. If the person is not required to drive for essential employment-related purposes except during standard working hours, the limited driving privilege shall prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (i) of this section. The limited driving privilege shall state the name and address of the applicant's place of work or employer and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(h) Employment Driving in Nonstandard Working Hours. – If a person is required to drive during nonstandard working hours for an essential employment-related purpose and the person provides to the court documentation of that fact, the court may authorize the person to drive for that purpose during those hours. If the person is self-employed, the documentation shall be attached to or made a part of the limited driving privilege. The limited driving privilege shall state the name and address of the person's place of employment or employer and may include other information and restrictions applicable to work-related driving, in the discretion of the court. If the court determines that it is necessary for the person to drive during nonstandard working hours for an employment-related purpose, the court may authorize the person to drive subject to these limitations:

(1) If the person is required to drive to and from a specific place of employment at regular times, the limited driving privilege shall specify the general times and routes in which the person will be driving to and from work and restrict driving to those times and routes.

(2) If the person is required to drive to and from work at a specific place but is unable to specify the times during which the driving will occur, the limited driving privilege shall specify the general routes which the person will be driving to and from work and restrict the driving to those general routes.

(3) If the person is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege shall specify the general times and geographic boundaries in which the person will be driving and restrict driving to those times and within those boundaries.

(4) If the person can specify neither the times nor places in which the person will be driving to and from work, or if the person is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege shall specify the geographic boundaries in which the person will drive and restrict driving to within those boundaries.

(i) Household Maintenance. – A limited driving privilege may not allow driving for maintenance of the household except during standard working hours. The limited

driving privilege may contain any additional restrictions on that driving, in the discretion of the court.

(j) Proof of Financial Responsibility. – A person applying for a limited driving privilege under this section shall provide to the court proof of financial responsibility, and a limited driving privilege shall be conditioned upon the maintenance of financial responsibility during the period of the limited driving privilege. The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. This subsection does not apply to a person who does not own a currently registered motor vehicle and who does not operate a nonfleet private passenger motor vehicle that is owned by another person and that is not insured under a commercial motor vehicle liability insurance policy. If this subsection applies, the person shall sign a written certificate to that effect. The Division shall furnish the certificate. Any material misrepresentation made by the person on the certificate shall be grounds for the court to revoke the limited driving privilege granted under this section.

Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically transmitted facsimile of the certificate issued by an insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

(k) Other Restrictions. – The court shall include in all limited driving privileges a restriction that the holder of the privilege not consume alcohol while driving or drive at any time while the holder has remaining in the holder's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The court may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(l) Term. – The term of a limited driving privilege issued under this section shall be one year. Upon the expiration of the term of the limited driving privilege or after three years from the date of the permanent revocation, the person may apply to the Division for a license under G.S. 20-28(c) or G.S. 20-28.1(c).

(m) Notification. – The clerk of court shall send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section or that does not contain the limitations required by law is invalid.

(n) Modification. – A court may modify or revoke a person's limited driving privilege issued under this section upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege. The judge shall indicate in the order of modification or revocation the reasons for the order, or the judge shall make specific findings indicating the reason for the order, and those findings shall be entered in the record of the case. When a court issues an order of modification or revocation, the clerk shall send a copy of the order to the Division.

(o) Effect of Violation. – A violation of a limited driving privilege issued under this section constitutes the offense of driving while license revoked under G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege shall be suspended pending the final disposition of the charge."

SECTION 2. G.S. 7A-305 is amended by adding a new subsection to read:

"(a3) In every motion to obtain a limited driving privilege filed under G.S. 20-20.1, a cost of one hundred dollars ($100.00) shall be assessed against the person filing the motion. Costs collected by the clerk under this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit one-half of the assessed cost to the Highway Fund and the remaining one-half of the assessed cost to the Court Information Technology Fund established under G.S. 7A-343.2. Costs assessed under this subsection are in addition to any other costs assessed under this section."

SECTION 3. This act becomes effective December 1, 2007, and applies to permanent revocations that occur on or after that date.

Conference of District Attorneys
NORTH CAROLINA

Peg Dorer
Director

P.O. Box 25546
Raleigh, NC 27611

919.733.3484
919.715.0138

February 13, 2007

The Honorable John H. Kerr, III
North Carolina General Assembly
526 Legislative Office Building
Raleigh, NC 27603-5925

Dear Senator Kerr:

At the most recent meeting of the Executive Committee of the North Carolina Conference of District Attorneys, the Committee voted to continue our support for your forthcoming bill entitled, "Limited Driving Privileges - DWLR Bill."

As you are well aware, there are many reasons for a person's driving privileges to be revoked. Often times, because of employment, family, or emergency obligations, people continue to drive after having their license revoked and then may incur additional violations. This causes a "revolving door" situation from which these same people cannot escape.

The Conference of District Attorneys believes that as long as there are restrictions on the type of revocation, it is appropriate for some of these individuals to obtain a limited driving privilege so that they can continue to meet their obligations. The restrictions that exist in the bill you sponsored last year, especially the exclusion of persons who had their licenses revoked because of impaired driving, were most appropriate.

Please do not hesitate to call if the Conference can be of any assistance to you in your pursuit of this legislation or any other issues.

Sincerely,

Peg Dorer
Director

EXECUTIVE COMMITTEE

Garry Frank
President

W. Clark Everett
President Elect

Tom Horner
Vice President

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Past President

Benjamin R. David

James R. Woodall, Jr.

Belinda J. Foster

[redacted]omas J. Keith

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1026*

Short Title:	Drivers License Issuance/Expiration Dates.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CORRECT A PROCEDURAL TECHNICAL ERROR IN THE REQUIREMENT THAT AN APPLICANT PRESENT A VISA OF LIMITED DURATION FROM THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND TO CORRECT AN APPARENT ERROR IN THE EXPIRATION DATE FOR DRIVERS LICENSES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this ~~subsection.~~subsection:

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 ~~shall expire~~expires on the person's twenty-first birthday.

(2) Duration of original license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than 54 years old expires ~~eight years after the date of issuance.~~on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person at least 54 years old expires ~~five years after the date of issuance.~~on the birthday of the licensee in the fifth year after issuance.

(2a) Duration of renewed licenses. – A renewed drivers license that was issued by the Division to a person at least 18 years old but less than 54 years old expires eight years after the expiration date of the license that is renewed. A renewed drivers license that was issued by the Division to a person at least 54 years old expires five years after the expiration date of the license that is renewed.

(3) Duration of ~~license.~~license for certain other drivers. ~~A drivers license that was issued by the Division and is renewed by the Division expires at the end of the period provided by this subsection after the expiration date of the license that is renewed~~ The durations listed in subdivisions (1), (2), and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. ~~A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.~~

(3a) When to renew. – A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(5) **(Effective July 1, 2008)** License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant.

...."

SECTION 2. G.S. 20-7(f)(3), as amended by Section 1 of this act, reads as rewritten:

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3) Duration of license for certain other drivers. –The durations listed in subdivisions (1), (2) and (2a) if this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds ~~a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States.~~valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States."

SECTION 3. G.S. 20-7(s) reads as rewritten:

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(s) Notwithstanding the requirements of subsection (b1) of this section that an applicant present a valid social security number, the Division shall issue a drivers license of limited duration, under subsection (f) of this section, to an applicant present in the United States ~~under a valid visa issued to the applicant by the United States Department of Homeland Security if the applicant presents that valid visa.~~who holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States if the applicant presents that valid documentation and meets all other requirements for a license of limited duration."

SECTION 4. 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:

...

(2) Canceled. – As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or ~~fraud~~ fraud, or to which G.S. 20-15(a)(3) applies, is void and terminated.

...."

SECTION 5. G.S. 20-15(a) reads as rewritten:

"**§ 20-15. Authority of Division to cancel license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining ~~that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.~~any of the following:

(1) The licensee was not entitled to the issuance of the license under this Chapter.

(2) The licensee failed to give the required or correct information on the license application or committed fraud in making the application.

(3) The licensee is no longer authorized under federal law to be legally present in the United States."

SECTION 6. Section 1 of this act becomes effective January 1, 2007, and applies to drivers licenses issued or renewed on or after that date. Sections 2 through 5 are effective when this act becomes law and applies to drivers licenses issued or renewed on or after that date. Section 6 of 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

March 28, 2007

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 1026 - Drivers License Issuance/Expiration Dates**

General Comments

This bill (i) restores the licensee's birthday as the expiration date of most drivers licenses, (ii) corrects the description of the documents an applicant with legal nonimmigrant status must present to obtain a drivers license, and (iii) allows the Division of Motor Vehicles to cancel the license of a person who is no longer authorized under Federal law to be in the United States.

Specific Comments

Section 1. This section amends G.S. 20-7(f) to restore the licensee's birthday as the expiration date of a drivers license for a person 18 years old or older. When the duration of a drivers license was extended last year in S.L. 2006-257 to eight years, or five years for those 54 or older, the expiration date was changed to be eight (or five) years "after issuance" rather than on the licensee's birthday in the eighth (or fifth) year after issuance. The General Statutes Commission is informed that the change was inadvertent, and the change back to the licensee's birthday was requested by the Division of Motor Vehicles. The section also makes stylistic updates and organizational changes. Section 6 makes this section retroactively effective to January 1, 2007, the effective date of S.L. 2006-257.

Sections 2 and 3. These sections amend G.S. 20-7(f) and (s), respectively, to fix a problem with the documents required to be presented by nonimmigrant applicants for a drivers license to establish that they are legally present in the United States and how long they are authorized to stay. Currently, G.S. 20-7(s) requires such an applicant to present a "visa" from the "Department of Homeland Security," and G.S. 20-7(f) ties the duration of the drivers license to the duration of the visa. There are actually two problems with these provisions. First, the Department of Homeland Security (Homeland Security) does not issue visas; they are issued by the Department of State. Second, a visa issued by the Department of State is not the correct document to establish a person's legal presence in this country or the length of time the person is authorized to be here. Under current Federal law, a visa allows a person to travel to the United States, but it does not guarantee entry. Actual permission to enter is given by Homeland Security, which also fixes the length of the person's stay. Moreover, except for two narrow categories, the citizens of some countries, such as Canada, are not required to have a visa to come to the United States. These persons do not have visas at all, although they receive documentation from or through Homeland Security. Finally, there is no one Homeland Security document that contains the necessary information for every category of legal nonimmigrant. As a result, the amendments in Sections 2 and 3 replace the visa requirement with a generic description ("valid documentation issued by, or under the authority of, the United States

State of North Carolina General Statutes Commission		9001 Mail Service Center RALEIGH, NORTH CAROLINA 27699-9001

MEMORANDUM

March 28, 2007

government that demonstrates the applicant's legal presence of limited duration in the United States").

Sections 4 and 5

. These sections together authorize Division of Motor Vehicles to cancel a drivers license issued to a legal nonimmigrant if that person's authorization to be in the United States terminates earlier than originally scheduled (for example, a foreign student admitted to a four-year undergraduate program who decides to "drop out" of school after two years). Section 5 amends subsection (a) of G.S. 20-15 ("Authority of Division to cancel license or endorsement") to add this authority; section 5 also makes stylistic updates and organizational changes. Section 4 makes a conforming change to G.S. 20-4.01(2), the definition of "canceled."

Section 6. This section contains effective date and applicability provisions.

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 3, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 393	Felony/Steal Or Cut Another's Timber.	Senator Weinstein
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 777	Amend CPA Criminal Punishment.	Senator Goodall
SB 947	Uniform Trust Code Changes.	Senator Hagan

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, April 3, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 5	Methadone Distribution/2nd Degree Murder.	Senator Snow
SB 393	Felony/Steal Or Cut Another's Timber.	Senator Weinstein
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 777	Amend CPA Criminal Punishment.	Senator Goodall
SB 947	Uniform Trust Code Changes.	Senator Hagan

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 3, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 2, 2007, with fifteen members present. Senator Hartsell introduced pages Katherine Bakewell and Linsay Dozier and thanked them for their services.

SB 5 (Methadone Distribution/2nd Degree Murder.) Senator Hartsell noted that the bill was introduced at the March 15th meeting and was continued until the March 20th meeting at which time it received a favorable report. Due to the need to refer the bill to Appropriations, Senator Hartsell asked for a motion to recall the bill. Senator East so moved, all voted and the motion carried. Senator Apodaca then moved for a favorable report to the Proposed Committee Substitute with a referral to Appropriations. All voted and the motion carried.

SB 393 (Felony/Steal or Cut Another's Timber.) Senator Hartsell noted that Senator Weinstein's bill had been heard at the March 20th meeting and had received a favorable report. Senator Weinstein wished to amend his bill and Senator Hartsell asked for a motion to recall. Senator Bingham so moved, all voted and the motion carried. Senator Weinstein was recognized to present his amendment. Senator Apodaca moved to accept the amendment, all voted and the motion carried. Senator Bingham moved for a favorable report as amended and rolled into a new Committee Substitute with a referral to Appropriations. All voted and the motion carried.

SB 677 (Expunge Nonviolent Felony/Youthful Offender.) Senator Hartsell recognized Senator Berger to explain the bill. Senator Berger introduced Mr. Eddie Caldwell, representing the Sheriff's Association who spoke in opposition to parts of the bill. Also, speaking in regards to the bill were, Mr. Pete Powell, Deputy Director of the Administrative Office of the Courts and Representative Bordsen. The bill was displaced until a later time.

SB 947 (Uniform Trust Code Changes.) Senator Hagan was recognized to explain the bill. Mr. Knox Proctor, representing the North Carolina Bar Association, spoke on the bill. The bill was displaced and will be heard again at the Thursday meeting.

SB 92 (Dangerous Dogs/Liability Insurance) Senator Hartsell appointed a sub committee for this bill, naming Senator Bingham as Chair along with Senators Apodaca, Jones, East and Berger.

SB 777 (Amend CPA Criminal Punishment.) Senator Goodall was recognized to explain the bill and presented an amendment. Senator Snow moved for a favorable report as amended, unfavorable to the original bill, and rolled into a new Committee Substitute. It was then decided to hold the bill for the Thursday meeting for further discussion

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 9, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Knox Proctor	Ward and Smith, P.A.
Doug Heron	NC Bar Association
Christine Wamsche	IOG - Daily Bulletin
PB Powell	AOC
Pamela Senner	NCASA
Troy Page	NC Sentencing Commission
Casandra White	Gov. Office
Wayne Yancey	Staff
Dennis Patterson	OSC
Henry Jones	Attorney Raleigh
Bob Stevens	NCFA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ahler	NC Assn of CPAs
Daniel Bacon	Kennedy Covington
Eddie Caldwell	NC Sheriffs' Assn
Paul Stock	NC Bankers Assn.
Dick Zorn	NCAOC
Todd Barlow	NCATL
Amy McConkey	Smith Anderson
Joe Smith	NCCCA
Paul Parker	NCATL
Mark Dixon	BSA
Sarah Preston	DCSA
Leann Killian	Nelson Mullins

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 3, 2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Egerton	LLC
Floyd Lewis	General Statutes Commission
P. Bay Hall	GSC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 5

Short Title: Methadone Distribution/2nd Degree Murder. (Public)

Sponsors: Senators Snow; Boseman, Goodall, and Jenkins.

Referred to: Judiciary II (Criminal).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ADD METHADONE AND OTHER SCHEDULE II DRUGS TO COCAINE AND METHAMPHETAMINE AS CONTROLLED SUBSTANCES WHICH, IF UNLAWFULLY DISTRIBUTED AND CAUSE A DEATH, ALLOW FOR A CHARGE OF SECOND DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other any substance described in G.S. 90-90, ~~G.S. 90-90(1)d., or methamphetamine,~~ when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 393

Short Title:	Felony/Steal Or Cut Another's Timber.	(Public)
Sponsors:	Senators Weinstein; Albertson, Apodaca, Atwater, Brock, Dannelly, Malone, Snow, Stevens, and Swindell.	
Referred to:	Judiciary II (Criminal).	

February 28, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CUTTING, INJURING, OR REMOVING ANOTHER'S TIMBER RESULTING IN DAMAGES THAT EXCEED ONE THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-135 reads as rewritten:

"**§ 14-135. Cutting, injuring, or removing another's timber.**

If any person not being the bona fide owner thereof, shall knowingly and willfully cut down, injure or remove any standing, growing or fallen tree or log, the property of another, he shall be guilty of a ~~Class 1 misdemeanor.~~criminal offense as follows:

(1) If the damage caused by a violation of this section is one thousand dollars ($1,000) or less, then the offense is a Class 1 misdemeanor.

(2) If the damage caused by a violation of this section is more than one thousand dollars ($1,000), then the offense is a Class I felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____

S. B. No. 393

COMMITTEE SUBSTITUTE _____

DATE 4/3/08

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

Rep.)
Sen.) Weinstein Weinstein

moves to amend the bill on page 1, line _____

( ) WHICH CHANGES THE TITLE

by deleting the phrase "one thousand dollars ($1,000)" wherever it appears in the bill and replacing it with the phrase "two thousand five hundred dollars ($2,500)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 677*

Short Title:	Expunge Nonviolent Felony/Youthful Offender.	(Public)
Sponsors:	Senators Berger of Franklin; Dannelly and Malone.	
Referred to:	Judiciary ll (Criminal).	

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

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

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

and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma or a high school graduation equivalency certificate or that the petitioner is attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma or high school graduation equivalency certificate or is attending a program in pursuit of a General Education Development Degree or adult high school diploma.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom an order has been entered pursuant to this subsection shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction.

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

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

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

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2007, and expires December 1, 2014.

SENATE BILL 677:
Expunge Nonviolent Felony/Youthful Offender

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 2, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 677 would provide for the expunction of a nonviolent felony conviction from the criminal record of an offender who was under the age of 18 at the time of the commission of the nonviolent felony. A petition for expunction may not be filed earlier than two years after the latter or either the date of the conviction or the completion of the active sentence, period of probation, or post- release supervision. The petition shall include affidavits supporting the following: completion of 100 hours of community service, no prior or subsequent felony or misdemeanor convictions (other than traffic violations), no outstanding restitution orders or civil judgments, and possession or current pursuit of a high school diploma or General Education Development (GED) Degree.***

[As introduced, this bill was identical to H898, as introduced by Reps. Bordsen, Crawford, Hall, Jones, which is currently in House Juvenile Justice.]

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

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

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

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2], "Expunction of DNA records when charges are

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.

dismissed on appeal or pardon of innocence is granted"[3], and "Expunction of records when pardon of innocence is granted."[4]

BILL ANALYSIS: The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-150 would allow for the expunction of a nonviolent felony from the criminal records of a first time offender who is under 18 years of age at the time of the commission of the nonviolent felony if the person has no previous or subsequent felony or misdemeanor convictions, other than traffic violations. "Nonviolent felony" would include any felony *except* the following:

- A Class A through G felony;
- A felony that includes assault as an essential element of the offense;
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders); and
- Any Chapter 90 felony offense involving methamphetamines.

If the person is convicted of more than one nonviolent felony in the same session of court, the bill provides that the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction and be expunged from the person's record by the expunction order issued under this section.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition may not be filed earlier than two years after the date of conviction or after the time that any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of good behavior by the petitioner for the two years following conviction, stating that the petitioner has not been convicted of any felony or misdemeanor charge, other than traffic violations, under the laws of the United States, this State or any other state during that time;

2) Two affidavits of good character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding;

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services; and

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma or high school graduation equivalency certificate or is pursuing a high school diploma or GED.

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[3] G.S. 15A-148.
[4] G.S. 15A-149.

The petition is served on the district attorney, who has 10 days to file any objections. The district attorney is directed to contact the victim, if any, to notify the victim of the request for expunction prior to the hearing date. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the status he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation. Department of Justice DNA records and samples stored in the State DNA database and the State DNA Databank, however, shall not be expunged or destroyed as a result of any order for expunction of records issued under this section.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to also reverse any administrative actions taken against a person whose record is expunged under this section.

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

If a probation officer is assigned to a person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

The bill would set the filing fee for the expunction petition at $100.00 unless the petitioner is indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2007 and would expire December 1, 2014.

S0677e1-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 777*

Short Title:	Amend CPA Criminal Punishment.	(Public)
Sponsors:	Senators Goodall; Apodaca and Hoyle.	
Referred to:	Judiciary II (Criminal).	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR VIOLATING CERTAIN LAWS REGULATING CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93-13 reads as rewritten:

"**§ 93-13. Violation of Chapter; penalty.**

~~Any violation of the provisions of this Chapter shall be deemed a Class 3 misdemeanor, and upon conviction thereof the guilty party shall only be fined not less than one hundred dollars ($100.00) and not exceeding one thousand dollars ($1,000) for each offense.~~A violation of G.S. 93-3, 93-4, 93-5, or 93-6 shall be a Class 1 misdemeanor. Each violation shall constitute a distinct and separate offense."

SECTION 2. This act becomes effective December 1, 2007, and applies to violations occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 777*

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

S777-ARI-4 [v.1]

Date 4/23 ,2007

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

Senator Goodall

moves to amend the bill on page 1, line 11, by rewriting that line to read:
"misdemeanor. Each day's violation shall constitute a distinct and separate offense.".

SIGNED W E Goodall
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 777*

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

S777-ARI-4 [v.1]

Date _____,2007

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

Senator Goodall

moves to amend the bill on page 1, line 11, by rewriting that line to read:
"misdemeanor. Each day's violation shall constitute a distinct and separate offense.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 947

Short Title:	Uniform Trust Code Changes.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary II (Criminal).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE UNIFORM TRUST CODE AND OTHER RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-13-3(a)(5) reads as rewritten:

"(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent ~~man~~ person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including ~~but not limited to~~ the powers specified in the following subdivisions:

...

(5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative ~~upon compliance with the provisions of G.S. 36A-63.~~ pursuant to G.S. 53-163.1.

...."

SECTION 1.1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"Article 2C.

"Limitations on Authority of Attorney-in-Fact.

"**§ 32A-14.13. Limitations on authority of attorney-in-fact.**

(a) Notwithstanding any provision in this Chapter to the contrary, an attorney-in-fact may not:

(1) Perform duties under a contract that requires the exercise of personal services of the principal;

(2) Make any affidavit as to the personal knowledge of the principal;

(3) Vote in any public election on behalf of the principal;

(4) Execute or revoke any will or codicil for the principal; or

(5) Exercise the powers with respect to a revocable trust set forth in G.S. 36C-6-602A(a) if the exercise of such powers would alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(b) This section is not intended to apply to or impair in any way the power of an attorney-in-fact to make gifts of the principal's property, which power is governed by Article 2A and 2B of this Chapter."

SECTION 1.2. G.S. 36B-8 reads as rewritten:

"**§ 36B-8. Conflict with other law.**

To the extent that the provisions of this Chapter are inconsistent with the provisions of either Chapter ~~36A~~ 36C or Chapter 55A, the provisions of this Chapter shall control. The provisions of this Chapter shall not apply to the University of North Carolina."

SECTION 2. G.S. 36C-1-103 reads as rewritten:

"**§ 36C-1-103. Definitions.**

~~In this~~ The following definitions apply in this Chapter:

(1) ~~"Action", with respect~~ Action. – When applicable to an act of a trustee, includes a failure to act.

(2) ~~"Ascertainable standard" means a~~ Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) ~~"Beneficiary" means a~~ Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property.

(4) ~~"Charitable trust" means a~~ Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).

(5) ~~"Environmental law" means a~~ Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) ~~"General guardian" means a general guardian as that term is~~ General guardian. – As defined in G.S. 35A-1202(7).

(7) ~~"Guardian of the estate" means a guardian of the estate as that term is~~ Guardian of the estate. – As defined in G.S. 35A-1202(9).

(8) ~~"Guardian of the person" means a guardian of the person as that term is~~ Guardian of the person. – As defined in G.S. 35A-1202(10).

(9) ~~"Interests of the beneficiaries" means the~~ Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.

(10) ~~"Internal Revenue Code" means the~~ Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each

reference to a provision of the Internal Revenue Code shall include any successor to that provision.

(11) ~~"Jurisdiction", with respect~~ Jurisdiction. – When applicable to a geographic area, includes a state or country.

(12) ~~"Person" means an~~ Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(13) ~~"Power of withdrawal" means a~~ Power of withdrawal. – A presently exercisable general power of appointment other than a power:

a. Exercisable by a trustee and limited by an ascertainable standard; or

b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is:

a. The usual place of business of the corporate trustee if there is a corporate cotrustee.

b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.

(14) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(15) ~~"Qualified beneficiary" means a~~ Qualified beneficiary. – A living beneficiary ~~who,~~ to whom, on the date the beneficiary's qualification is ~~determined:~~ determined, any of the following apply:

a. Is a distributee or permissible distributee of trust income or ~~principal;~~ principal.

b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to ~~terminate; or~~ terminate.

c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(16) ~~"Revocable", as applied~~ Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(17) ~~"Settlor" means a~~ Settlor. – A person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the

extent another person has the power to revoke or withdraw that portion.

(18) ~~"Spendthrift provision" means a~~ Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(19) ~~"State" means a~~ State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(20) ~~"Terms of a trust" means the~~ Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.

(21) ~~"Trust instrument" means an~~ Trust instrument. – An instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.

(22) ~~"Trustee" includes~~ Trustee. – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts."

SECTION 3. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under G.S. 36C-10-1008;

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary;

(8) Periods of limitation for commencing a judicial proceeding;

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice; ~~and~~

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204.~~ G.S. 36C-2-204; and

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602A(a) shall not alter the designation of beneficiaries to

receive property on the settlor's death under that settlor's existing estate plan."

SECTION 4. G.S. 36C-1-107 reads as rewritten:

"(a) The meaning and effect of the terms of a trust are determined ~~by:~~ by any of the following:

(1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at ~~issue; or~~ issue.

(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) Notwithstanding subsection (a) of this section, the rights of a person other than a trustee or beneficiary are governed by G.S. 36C-10-1010 through G.S. 36C-10-1013."

SECTION 5. G.S. 36C-1-109(a) reads as rewritten:

"(a) Notice to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

Notice shall be deemed to be given when any of the following occur:

(1) When personally delivered by hand to the person.

(2) When transmitted by facsimile.

(3) When placed in the hands of a nationally recognized courier service for delivery.

(4) When received by the person if sent by registered or certified United States mail, return receipt requested.

(5) Three days after depositing the same in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail.

Delivery by any means other than those described in subdivisions (1) through (5) of this subsection shall be deemed to be delivered, given, and received for all purposes as of the date of the actual receipt."

SECTION 6. G.S. 36C-2-203(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a ~~trustee;~~ trustee, including the appointment and removal of a trustee pursuant to G.S. 36C-4-414(b).

(2) ~~To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk of superior court, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee is required to initiate a proceeding to resign or renounce as trustee;~~ To approve the resignation of a trustee.

(3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final ~~accounts;~~ accounts.

(4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in ~~G.S. 37A-1-104.3;~~ G.S. 37A-1-104.3.

(5) To transfer a trust's principal place of ~~administration;~~ administration.

(6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different ~~sureties;~~ sureties.

(7) To make orders with respect to a trust for the care of animals as provided in ~~G.S. 36C-4-408;~~ G.S. 36C-4-408.

(8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in ~~G.S. 36C-4-409; and~~ G.S. 36C-4-409.

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. ~~Upon motion of a party, the clerk of superior court may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court division of the General Court of Justice.~~ Any party may file a notice of transfer of a proceeding pursuant to this subsection to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article."

SECTION 7. G.S. 36C-2-203(c) reads as rewritten:

"(c) Nothing in this section affects the right of a person to file an action in the superior court division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. ~~In the event either the petitioner or respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter~~

~~1 of the General Statutes, either party may move for a transfer of the proceeding to the superior court division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent consistent with this Article.~~"

SECTION 8. G.S. 36C-2-204 reads as rewritten:

"**§ 36C-2-204. Venue.**

In any trust ~~proceeding or action,~~ proceeding, whether brought before the clerk of superior court or the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

(1) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.

(2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts ~~is:~~ is either of the following:

a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary ~~resides; or~~ resides.

b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.

~~(3) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:~~

~~a. The usual place of business of the corporate trustee if there is but one corporate or cotrustee; or~~

~~b. The usual place of business or residence of any of the cotrustees.~~

(4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or ~~if the trust is created by will,~~ in the case of a testamentary trust, in the county in which the decedent's estate was or is being administered."

SECTION 9. G.S. 36C-2-205 is amended by adding a new subsection to read:

"(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred."

SECTION 9.1. G.S. 36C-2-205 is amended by adding a new subsection to read:

"(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard."

SECTION 10. G.S. 36C-2-205(h) reads as rewritten:

"(h) Orders Upon ~~Consolidation/Joinder.~~ Consolidation/Joinder/Transfer. – Upon the consolidation of a trust proceeding and ~~civil action or~~ a civil action, joinder of claims under subsection (f) or (g) of this ~~section~~ section, or transfer to the superior court division of the General Court of Justice pursuant to subsection (g1) of this section, the clerk of superior court or the judge may make ~~such~~ appropriate orders ~~as appropriate~~ to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the ~~consolidation or joinder~~ consolidation, joinder of claims under subsection (f) or (g) of this section, or transfer to the superior court division of the General Court of Justice under subsection (g1) of this section, the clerk of superior court's exclusive jurisdiction as set forth in ~~G.S. 36C-2-203(a)~~ G.S. 36C-2-203(a)(1) through (8) shall not be stayed unless so ordered by the court."

SECTION 11. G.S. 36C-3-303 reads as rewritten:

"**§ 36C-3-303. Representation by fiduciaries, parents, and other persons.**

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or ~~dispute:~~ dispute involving a trust:

(1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.

(2) ~~A guardian of the person may represent and bind the ward if a general guardian or guardian of the estate of the ward's estate has not been appointed.~~

(3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.

(4) A trustee may represent and bind the beneficiaries of the ~~trust.~~ trust unless the question or dispute involves the internal affairs of the trust.

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(6) A parent may represent and bind the parent's minor child if a general ~~guardian,~~ guardian or guardian of the ~~estate, or guardian of the person~~ estate for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.

(7) A person may represent and bind that person's unborn issue."

SECTION 12. G.S. 36C-3-304 reads as rewritten:

"**§ 36C-3-304. Representation by person having substantially identical interest.**

Unless otherwise represented under this Article, a minor, an ~~incapacitated~~ incompetent or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person ~~represented.~~ represented with respect to the particular question or dispute."

SECTION 13. G.S. 36C-3-305(a) reads as rewritten:

"(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, ~~incapacitated~~ an incompetent or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests."

SECTION 14. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created ~~by:~~ by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's ~~death;~~ death, including either of the following:

a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by ~~law; or~~ law.

(3) Exercise of a power of appointment in favor of a trustee."

SECTION 15. G.S. 36C-4-409 reads as rewritten:

"**§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

Except as otherwise provided in G.S. 36C-4-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years. If the trust is still in existence after 21 years, the trust shall terminate, and the unexpended trust property shall be transferred in the following order:
   a. As directed in the trust instrument.
   b. If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.
   c. If no taker is produced by the application of sub-subdivisions a. or b. of this subdivision, to the settlor, if then living, otherwise to the settlor's heirs as determined under Chapter 29 of the General Statutes as of the date of the settlor's death.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent that the court determines that the value of the trust property exceeds the amount required for the intended use. ~~Except as otherwise provided in the terms of the trust,~~ The property not required for the intended use ~~must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.~~ shall be distributed under subdivision (1) of this section.

(4) Notwithstanding subdivisions (1) through (3) of this section, a trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This section does not repeal or supersede G.S. 36C-4-413."

SECTION 16. G.S. 36C-4-410 reads as rewritten:

"**§ 36C-4-410. Modification or termination of trust; proceedings for approval or disapproval.**

(a) In addition to the methods of termination prescribed by G.S. 36C-4-411 through G.S. 36C-4-414, a trust terminates to the extent that the trust is revoked or expires under its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411 through ~~G.S. 36C-4-416, or trust combination or division under G.S. 36C-4-417.~~ G.S. 36C-4-416. A settlor may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a necessary party to any proceeding under this ~~section.~~ Article.

(c) Repealed by Session Laws 2006-259, s. 13(c), effective October 1, 2006."

SECTION 17. G.S. 36C-4-411 reads as rewritten:

"**§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.**

(a) ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries,~~ If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they may compel the modification or termination of the trust without the approval of the court even if the modification or termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any competent adult beneficiary or the representative of any beneficiary properly represented under Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad litem. The court shall allow the modification or termination if the court finds that, following the appointment of a guardian ad litem, all beneficiaries or their representatives have consented. A settlor's power to consent to a trust's modification or termination may be exercised ~~by~~ by:

(1) ~~an~~ An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the ~~trust; by the~~ trust.

(2) The settlor's general guardian or the guardian of the estate with the approval of the court supervising the ~~guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the court supervising the guardianship if an agent is not so authorized and a general guardian or guardian of the estate has not been appointed.~~ guardianship.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries, if the court concludes that modification is consistent with a material purpose of the trust.

(c) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for

modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c) of this section, the modification or termination may be approved by the court if the court is satisfied ~~that:~~ that all of the following apply:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this ~~section; and~~ section.

(2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Repealed by Session Laws 2006-259, s. 13(d), effective October 1, 2006.

(f) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust under this section, the presumption of fertility is rebuttable.

(g) If a trust instrument provides for the disposition of property to a class of persons described only as "heirs" or "next of kin" of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances."

SECTION 17.1. G.S. 36C-4-413(c) is repealed.

SECTION 18. G.S. 36C-4-418 reads as rewritten:

"**§ 36C-4-418. Distribution upon termination of trust.**

Upon termination of a trust under ~~G.S. 36C-4-411,~~ G.S. 36C-4-411(a), the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under ~~G.S. 36C-4-412 or G.S. 36C-4-414,~~ G.S. 36C-4-411(b) or (c), the trustee shall distribute the trust property in accordance with the order entered by the court. Upon termination of a trust under G.S. 36C-4-412(a) or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. ~~If any trust property becomes distributable to a minor or incompetent under this Article, it may be distributed:~~

~~(1) To the guardian of the estate or general guardian of the beneficiary;~~

~~(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or~~

~~(3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.~~"

SECTION 19. G.S. 36C-5-501(b) reads as rewritten:

"(b) ~~This~~ Subsection (a) of this section shall not ~~apply~~ apply, and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the extent that a beneficiary's ~~interest:~~ interest is protected or restricted by any of the following:

(1) ~~Is subject to a~~ A spendthrift ~~provision;~~ provision.

(2) ~~Is a~~ A discretionary trust interest as defined in ~~G.S. 36C-5-504(a)(2); or~~ G.S. 36C-5-504(a)(2).

(3) ~~Is a~~ A protective trust interest as described in G.S. 36C-5-508."

SECTION 20. G.S. 36C-5-505 reads as rewritten:

"**§ 36C-5-505. Creditor's claim against settlor.**

(a) ~~Whether~~ Subject to the other applicable law, whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by ~~G.S. 28A-19-3.~~ applicable law.

(b) For purposes of this section, with respect to a power of withdrawal over property of a trust exercisable by a holder of the power other than the settlor of the trust, both of the following shall apply:

(1) The property subject to the exercise of the power shall be subject to the claims of the creditors of the holder only when and to the extent that the holder exercises the power.

(2) The lapse, release, or waiver of a power ~~of withdrawal~~ shall not be deemed to be an exercise of the power and shall not cause the holder to be treated as a settlor of the trust."

SECTION 21. G.S. 36C-6-602(e) is repealed.

SECTION 22. G.S. 36C-6-602(f) is repealed.

SECTION 23. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-6-602A. Exercise of settlor's powers with respect to revocable trust by agent or guardian.

(a) An agent acting under a power of attorney may exercise any of the following powers of the settlor with respect to a revocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

(1) Revocation of the trust.

(2) Amendment of the trust.

(3) Additions to the trust.

(4) Direction to dispose of property of the trust.

(5) The creation of the trust, notwithstanding G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this section shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(b) A general guardian or a guardian of the estate of the settlor may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24)."

SECTION 24. G.S. 36C-6-603 reads as rewritten:

"**§ 36C-6-603. Settlor's ~~powers; powers of withdrawal.~~ control of revocable trust.**

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. If a trustee is a settlor, the trustee's actions are presumed to be taken at the direction of the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors."

SECTION 25. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-605. Failure of disposition of property of a trust by lapse or otherwise.**

(a) If a beneficiary under a revocable trust predeceases the execution of the trust or the settlor or is treated as having predeceased the settlor, and if the beneficiary is a grandparent of or a descendant of a grandparent of the settlor, then the issue of the predeceased beneficiary who survive the settlor shall take in place of the deceased beneficiary. The deceased beneficiary's issue shall take the deceased beneficiary's share in the same manner that the issue would take as heirs of the deceased beneficiary under the intestacy provisions in effect at the time of the settlor's death. The provisions of this section apply whether the disposition of property is to an individual, to a class, or is a part of the residue of the trust. In the case of the disposition to a class, the issue shall take whatever share the deceased beneficiary would have taken had the deceased beneficiary survived the settlor. In the event the deceased class member leaves no issue, the deceased beneficiary's share shall devolve upon the members of the class who survived the settlor and the issue of any deceased members taking by substitution.

(b) If the provisions of subsection (a) of this section do not apply to the disposition of property that fails, the property shall pass to the beneficiaries in proportion to their share of the residue of the trust. If the disposition is part of the residue of the trust, it shall augment the shares of the other residuary beneficiaries,

including the shares of any substitute takers under subsection (a) of this section. If there are no residuary beneficiaries, then the property shall pass by intestacy."

SECTION 26. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36-6-606. Revocation of provisions in revocable trust by divorce or annulment; revival.**

Dissolution of the settlor's marriage by absolute divorce or annulment after executing a revocable trust revokes all provisions in the trust in favor of the settlor's former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as trustee. Property prevented from passing to the former spouse because of revocation by divorce or absolute annulment passes as if the former spouse failed to survive the settlor, and other provisions conferring some power or office on the former spouse are interpreted as if the former spouse failed to survive the settlor. If provisions are revoked solely by this section, they are revived by the settlor's remarriage to the former spouse. The reference to "former spouse" in this section includes a purported former spouse."

SECTION 26.1 Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-607. Modification or termination of a revocable trust.**

(a) A revocable trust may be modified or terminated by the court pursuant to any of the methods for modification or termination of an irrevocable trust set forth in G.S. 36C-4-411(b) or (c), G.S. 36C-4-412, G.S. 36C-4-415, or G.S. 36C-4-416.

(b) The settlor is a necessary party to any proceeding brought to modify or terminate a revocable trust."

SECTION 27. G.S. 36C-7-703(f) is repealed.

SECTION 28. G.S. 36C-7-703(g) reads as rewritten:

"(g) ~~Each~~ A trustee shall exercise reasonable ~~care~~ care in connection with matters for which the trustee is given authority under the terms of a trust to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust."

SECTION 29. G.S. 36C-7-703(h) reads as rewritten:

"(h) Notwithstanding subsection ~~(f) or~~ (g) of this ~~section, a trustee who has not joined in an action approved by a majority of the other trustees is not liable for the action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who joins in an action at the direction of the majority of the trustees but who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action, unless that trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action.~~ section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:

(1) The trustee does not join in an action approved by a majority of the other trustees.

(2) The dissenting trustee joins in an action necessary to carry out the decision of the majority of the trustees and notifies in writing the cotrustees of the dissent at or before joining in the action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action."

SECTION 30. G.S. 36C-7-704(d) reads as rewritten:

"(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;

(2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or

(3) By a person appointed by the court."

SECTION 31. G.S. 36C-8-802(d) reads as rewritten:

"(d) A transaction between a trustee and a beneficiary that does not concern trust property, but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary, and from which the trustee obtains an ~~advantage,~~ advantage and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers similarly situated customers, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary."

SECTION 32. G.S. 36C-8-802(f) reads as rewritten:

"(f) Notwithstanding subsection (c) of this section:

(1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under G.S. 36C-8-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined; and

(2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent

with payments generally made ~~in the community~~ for the same or similar services."

SECTION 33. G.S. 36C-8-802(h) reads as rewritten:

"(h) This section does not preclude any of the following ~~transactions, if fair to the beneficiaries:~~ transactions:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the ~~trustee;~~ trustee.

(2) Payment of ~~reasonable~~ compensation to which the ~~trustee;~~ trustee is entitled under G.S. 36C-7-708.

(3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an ~~interest;~~ interest.

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the ~~trustee; or~~ trustee.

(5) An advance by the trustee of money for the protection of the trust."

SECTION 34. G.S. 36C-8-808(a) reads as rewritten:

"(a) While a trust is revocable, the trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust."

SECTION 34.1. G.S. 36C-8-810(d) reads as rewritten:

"(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest and administer as a whole the property of two or more separate trusts."

SECTION 35. G.S. 36C-8-813 reads as rewritten:

"**§ 36C-8-813. Duty to inform and report.**

(a) The trustee is under a ~~duty to a qualified beneficiary to give that beneficiary upon request and at reasonable times complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary, or the beneficiary's representative, to inspect the subject matter of the trust and the accounts and other documents relating to the trust.~~ duty to do all of the following:

(1) Provide reasonably complete and accurate information as to the nature and amount of the trust property, at reasonable intervals, to any qualified beneficiary who is a distributee or permissible distributee of trust income or principal.

(2) In response to a reasonable request of any qualified beneficiary:

a. Provide a copy of the trust instrument.

b. Provide reasonably complete and accurate information as to the nature and amount of the trust property.

c. Allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.

(b) Notwithstanding subsection (a) of this section:

(1) The duty of the trustee under subsection (a) of this section shall not include informing any beneficiary in advance of transactions relating to the trust property.

(2) A trustee is considered to have discharged the trustee's duty under subdivision (1) of subsection (a) of this section as to a qualified beneficiary for matters disclosed by a report sent at least annually and at termination of the trust to the beneficiary that describes the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, and lists the trust assets and their respective market values, including estimated values of assets with uncertain values. No presumption shall arise that a trustee who does not comply with this subdivision failed to discharge the trustee's duty under subdivision (1) of subsection (a) of this section.

(c) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. With respect to future reports and other information, a beneficiary may withdraw a waiver previously given.

~~(d) Subsection (b) of this section applies only to a trust created under a trust instrument executed on or after the effective date of this Chapter.~~"

SECTION 36. G.S. 36C-8-814(b) reads as rewritten:

"(b) Subject to subsection (d) of this section, and unless the terms of the trust ~~expressly~~ indicate by an express reference to this subsection that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power that would, except for this subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.

(2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal ~~benefit,~~ benefit that would, except for this subsection, constitute in whole or in part a general power of appointment, the trustee may exercise the power in accordance with an ascertainable standard.

(3) The trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(4) Any power conferred upon the trustee in the trustee's capacity as a trustee to allocate receipts and expenses as between income and principal in the trustee's own favor must be exercised in accordance with the provisions of Chapter 37A of the General Statutes, the Uniform Principal and Income Act of 2003.

For purposes of this subsection, a "general power of appointment" means any power that would cause the income to be taxed to the trustee in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or section 2514(c) of the Internal Revenue Code."

SECTION 37. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made by others to ~~a~~ any beneficiary;

(19a) Guarantee loans made by others to ~~a~~ any beneficiary;

(19b) Pledge trust property to guarantee loans made by others to ~~a~~ any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

...

(21) Pay an amount distributable to a beneficiary ~~who is under a legal disability~~ regardless of whether the beneficiary is a minor or incompetent or ~~who~~ whether the trustee reasonably believes ~~is incapacitated,~~ the beneficiary to be incompetent, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or if the beneficiary is a minor or incompetent or a person the trustee reasonably believes to be incompetent, by:

a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's ~~estate or, if the beneficiary does not have a general guardian or guardian of the beneficiary's estate, the guardian of the beneficiary's person;~~ estate;

b. Paying it to a custodian under a uniform transfer to minors act or custodial trustee under a uniform custodial trust act and, for that purpose, creating a custodianship or custodial trust for the benefit of the beneficiary;

c. Paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

d. Managing it as a separate fund on the beneficiary's behalf.

A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including ~~the~~ a minor

or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the ~~trustee;~~ trustee. Notwithstanding the foregoing, if a mandatory distribution is to be paid to a beneficiary who is not a minor or incompetent or a person the trustee reasonably believes to be incompetent, such amount may be applied for the beneficiary's benefit only with the beneficiary's consent;

...."

SECTION 37.1. Article 9 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-9-903A. Duties as to life insurance.**

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply."

SECTION 38. G.S. 32-53 reads as rewritten:

"**§ 32-53. Definitions.**

The following definitions apply in this Article:

~~(1) "Beneficiary" means (i) all living persons who are currently receiving or who are eligible to receive distributions of income or principal of the trust and (ii) all living persons who would be entitled to income and/or principal of the trust if the trust were to terminate at the time of the giving of the notice referred to in G.S. 32-55 (without regard to the exercise of any power of appointment).~~

~~(2) "Representative" means, with respect to a beneficiary who is under a legal disability, the beneficiary's agent under a durable power of attorney, general guardian, guardian of the estate, or guardian of the person of a beneficiary, and the parent of a minor beneficiary.~~

~~(3) "Trust" is as defined in G.S. 36A-22.1(5).~~

(1) Legal disability. – A person under a legal disability is a person who is a minor, incompetent, or unborn individual, or whose identity or location is unknown.

(2) Qualified beneficiary. – As defined in G.S. 36C-1-103(15). With respect to a charitable trust defined in G.S. 36C-1-103(4), the term includes (i) a charitable organization described in G.S. 36C-1-110 as

having the rights of a qualified beneficiary; or (ii) if there is no such charitable organization, the Attorney General.

(3) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

(4) Trust. – A trust to which Chapter 36C of the General Statutes applies as provided in G.S. 36C-1-102."

SECTION 39. G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) ~~The trustee shall~~ If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be ~~deemed to be given to the beneficiary only if notice is~~ given to the representative of the beneficiary. ~~If the trustee is the representative of the beneficiary, no notice shall be deemed to have been given to the beneficiary.~~ If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(d) ~~The written notice required under this section shall be deemed to be given as follows: (i) when personally delivered by hand to the person, (ii) when transmitted by facsimile or e-mail with confirmation of transmission, (iii) when placed in the hands of a nationally recognized courier service for delivery, (iv) when received by the person if sent by registered or certified United States mail, return receipt requested, (v) three days after depositing the same in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail. Notices delivered by any other means shall be deemed to be delivered, given, and received for all purposes as of the date of the actual receipt.~~ The provisions of G.S. 36C-1-109 regarding notices to persons under

Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 40. G.S. 32-56 reads as rewritten:

"§ 32-56. Payment of compensation without court order.

The trustee is authorized to pay the compensation provided for in G.S. 32-54 without prior approval of the clerk of superior court only if:

(1) The annual amount of compensation does not exceed four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year; or

(2) ~~No beneficiary~~ Notice has been given pursuant to G.S. 32-55 and no qualified beneficiary or representative of a qualified beneficiary has initiated a proceeding under G.S. 32-57 for review of the reasonableness of the compensation within 20 days after notice has been given by the trustee in accordance with G.S. 32-55."

SECTION 41. G.S. 32-57(a) reads as rewritten:

"(a) ~~The trustee or any beneficiary~~ If the terms of the trust do not specify the trustee's compensation, the trustee or any qualified beneficiary, or representative of a qualified beneficiary, may initiate a proceeding under Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 42. G.S. 32-58 reads as rewritten:

"§ 32-58. Reimbursement for expenses incurred.

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred or advanced in the administration of the trust and shall be empowered to pay the expenses from the assets of the trust without prior approval of the clerk of superior court. The court may allow reimbursement of other expenses incurred or advanced to which the trustee is entitled in equity and good conscience. The trustee shall have a lien on trust property to secure reimbursement, with reasonable interest, of expenses owed under this section."

SECTION 43. G.S. 32-71(c) and (d) are repealed.

SECTION 44. G.S. 37A-1-104(c)(8) reads as rewritten:

"(c) A trustee shall not make an adjustment:

...

(8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or ~~indirectly; or~~ indirectly, except that a trustee may make an adjustment that also benefits a beneficiary even if the terms of the trust provide for trustee compensation as a percentage of the trust's income; or

...."

SECTION 45. G.S. 37A-1-104.1 reads as rewritten:

"§ 37A-1-104.1. Definitions.

~~For purposes of this~~ The following definitions apply to this Part:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

~~(2) "Competent beneficiary" includes:~~

~~a. A beneficiary who has attained the age of 18 and is not otherwise under a legal disability;~~

~~b. A court-appointed guardian of an incompetent beneficiary;~~

~~c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;~~

~~d. A court-appointed guardian of a minor beneficiary's estate; and~~

~~e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.~~

(3) ~~"Disinterested person" means a~~ Disinterested person. – A person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the ~~grantor~~ settlor of the trust and any interested trustee.

~~(4) "Grantor" means an individual who created an inter vivos trust.~~

(5) ~~"Income trust" means a~~ Income trust. – A trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

(6) ~~"Interested distributee" means a~~ Interested distributee. – A living beneficiary who is a distributee or permissible distributee ~~person to whom distributions~~ of trust income or principal ~~can currently be made~~ who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

(7) ~~"Interested trustee" means~~ Interested trustee. – Any of the following:

~~(i)~~a. ~~an~~ An individual trustee ~~to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed,~~ who is a qualified beneficiary.

~~(ii)~~b. ~~any~~ Any trustee who may be removed and replaced by an interested ~~distributee, or~~ distributee.

~~(iii)~~c. ~~an~~ An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(7a) Legal disability. – A person under a legal disability is a person who is a minor, an incompetent, or an unborn individual, or whose identity or location is unknown.

(7b) Qualified beneficiary. – A qualified beneficiary as defined in G.S. 36C-1-103(15).

(8) ~~"Related or subordinate party" means a~~ Related or subordinate party. – A related or subordinate party as defined in section 672(c) of the Code.

(8a) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

(8b) Settlor. – An individual, including a testator, who creates a trust.

(9) ~~"Total return unitrust" means an~~ Total return unitrust. – An income trust that has been converted under and meets the provisions of this Part.

(9a) ~~"Treasury regulations" means the~~ Treasury regulations. – The regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

(10) ~~"Trustee" means any~~ Trustee. – Any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

(11) ~~"Unitrust amount" means an~~ Unitrust amount. – An amount computed as a percentage of the fair market value of the trust."

SECTION 46. G.S. 37A-1-104.2 reads as rewritten:

"**§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if:~~ if all of the following apply:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~policy.

(2) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with~~ including copies of the written policy and this Part, to (i) the ~~grantor~~ settlor of the trust, if living, and ~~(ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ (ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(3) There is at least (i) one ~~competent~~ qualified beneficiary described in ~~subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this subsection~~ G.S. 36C-1-103(15)a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described and (ii) one ~~competent~~ qualified beneficiary described in ~~subdivision (2)(iv) of this subsection;~~ G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(4) No person receiving notice of the trustee's intention to take the proposed action objects to the action within 60 days ~~of receipt of the notice~~ after notice has been given. The objection shall be by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if:~~ if all of the following apply:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter

rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~ policy.

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust ~~amount;~~ amount.

(3) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with~~ including copies of the written policy and this Part, and the determinations of the disinterested person to (i) the ~~grantor~~ settlor of the trust, if living, and (ii) all persons who are the ~~competent~~ qualified beneficiaries ~~who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(4) There is at least one (i) ~~competent~~ qualified beneficiary described in ~~subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this subsection~~ G.S. 36C-1-103(15)a. or b. or a representative of a beneficiary so described and (ii) one ~~competent~~ qualified beneficiary described in ~~subdivision (3)(iv) of this subsection;~~ G.S. 36C-1-103(15)c. or a representative of a qualified beneficiary so described. ~~and~~

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days ~~of receipt of~~ after ~~the~~ notice has been given. The objection must be by written instrument delivered to the trustee.

(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable

purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided ~~that:~~ that all of the following apply:

(1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions ~~(2)~~ (3) and ~~(3)~~ (4) of subsection (b) of this section, as the case may be, the trustee shall send written notice to ~~the named charity or charities~~ each charitable organization expressly designated ~~then entitled~~ to receive the income of the trust under the governing instrument and, if no ~~named charity or charities are~~ charitable organization is expressly designated ~~entitled~~ to receive all of the income of the trust under the governing instrument, to the Attorney General of this ~~State;~~ State.

(2) Subdivision (4) of subsection (a) of this section or subdivision ~~(4)~~ (5) of subsection (b) of this section, as the case may be, shall not apply to this ~~action; and~~ action.

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code.

(d) The provisions of G.S. 36C-1-109 regarding notices and the sending of documents to persons under Chapter 36C of the General Statutes shall apply for purposes of notices and the sending of documents under this section."

SECTION 47. G.S. 37A-1-104.3 reads as rewritten:

"**§ 37A-1-104.3. Conversion with court approval.**

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under ~~G.S. 36A-1-104.2,~~ G.S. 37A-1-104.2, the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A ~~competent~~ qualified beneficiary or a representative of a qualified beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the ~~competent~~ qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

(c) All proceedings under this section shall be conducted as provided in ~~Article 3 of Chapter 36A of the General Statutes.~~ Article 2 of Chapter 36C of the General Statutes."

SECTION 48. G.S. 37A-1-104.4 (a) reads as rewritten:

"(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary ~~also~~ may be excluded from the fair market value for computing the unitrust amount."

SECTION 49. G.S. 37A-1-104.4 (b) reads as rewritten:

"(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the ~~grantor~~ settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust."

SECTION 49.1. G.S. 37A-1-104.7 is repealed.

SECTION 50. G.S. 37A-1-104.9 reads as rewritten:

"**§ 37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the ~~grantor's~~ settlor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part, or expressly states the ~~grantor's~~ settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust." or "the trustee shall not determine the distributions to the income beneficiary as a unitrust amount." or similar words reflecting that intent is sufficient to preclude the use of this Part."

SECTION 51. G.S. 53-163.2 reads as rewritten:

"**§ 53-163.2. Investments in securities by banks or trust companies.**

Unless the governing instrument, court order, or a statute specifically directs otherwise, a bank or trust company serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate ~~thereof, as defined in G.S. 36A-60(1),~~ thereof participates or has participated as a member of a syndicate underwriting such security, if:

(1) The fiduciary does not purchase the security from itself or its affiliate; and

(2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments."

SECTION 52. G.S. 35A-1251(24) reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(24) To petition the court for ~~prior~~ approval ~~of transfers of assets of the ward~~ of the exercise of any of the following powers with respect to a revocable trust ~~executed by the ward~~ that the ward, if competent, ~~prior to the ward being declared incompetent, provided that the ward executed a paper writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn.~~ could exercise as settlor of the revocable trust:

a. Revocation of the trust.

b. Amendment of the trust.

c. Additions to the trust.

d. Direction to dispose of property of the trust.

e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate plan; and (ii) shall be

subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts."

SECTION 53. This act becomes effective October 1, 2007, and applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2007, shall apply.

SENATE BILL 947:
Uniform Trust Code Changes

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 2, 2007
Introduced by:	Sen. Hagan	**Summary by:**	Kory Goldsmith Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 947 makes conforming, technical, and substantive changes to Chapter 36C, the Uniform Trust Code, and to related statutes. The bill comes as a recommendation of the North Carolina Bar Association. This summary is substantially based upon information provided by the Bar Association.***

BILL ANALYSIS:

Sections 1 and 1.2 correct statutory citations.

Section 1.1 creates a new Article 2C in Chapter 32A regarding limitations on authority of an attorney-in-fact. The provisions explicitly prohibit an attorney-in-fact from performing duties under a personal services contract of the principal, from making an affidavit as to the personal knowledge of the principal, from voting on behalf of the principal in a public election, from executing or revoking a will or codicil for the principal, or from exercising the powers of a revocable trust to alter the designation of beneficiaries.

Section 2 amends G.S. 36C-1-103 to add to the list of definitions in Chapter 36C the definition of "principal place of administration" which appears in current G.S. 36C-2-204 relating to venue and to make that definition applicable with respect to other matters under Chapter 36C.

Section 3 amends G.S. 36C-1-105(b) to add a new mandatory rule that provides that the powers granted under 36C-6-602A cannot be exercised by an agent acting under a power of attorney in a manner that alters the designation of beneficiaries to receive property on the settlor's death.

Section 4 amends G.S. 36C-1-107(b) to clarify that North Carolina law governs rights of third parties dealing with a trust, even though the law of another jurisdiction may govern the rights of settlors, trustees, and beneficiaries.

Section 5 amends G.S. 36C-1-109(a) to make the current provisions in G.S. 32-55(d) relating to when notice is given to beneficiaries for purposes of trustee compensation applicable to notice to beneficiaries with respect to other matters under Chapter 36C in order to make uniform in the General Statutes the provisions concerning notices to beneficiaries of a trust.

Section 6 amends G.S. 36C-2-203(a)(1) to clarify that the clerk of court's exclusive jurisdiction to remove a trustee includes a removal of trustee action filed under G.S. 36C-4-414(b). The purpose of this revision is to make clear that a G.S. 36C-4-414(b) proceeding is not brought as a civil action in superior court. It amends G.S. 36C-2-203(a)(2) to clarify that the clerk of court may approve a trustee resignation if a resignation is put before the clerk. The reference to renunciation is deleted as it is not necessary for a trustee to obtain approval from a clerk to renounce. It also amends G.S. 36C-2-203(a)(9) to clarify that matters filed before the clerk of court under subdivision (a)(9) may be transferred out of the clerk's exclusive jurisdiction to superior court by any party. The clerk of court does not have the authority to prevent such a transfer from occurring.

Section 7 amends G.S. 36C-2-203(c) to clarify that notwithstanding the exclusive jurisdiction granted to the clerk of court under subdivision (a)(9), a party always has the ability to file a declaratory judgment action regarding the same matter in superior court if the matter also falls within the purview of the Declaratory Judgment Act.

Section 8 amends G.S. 36C-2-204 to delete the definition of "principal place of administration" which is being added to the list of definitions appearing in G.S. 36C-1-103. In addition, the words "or action" have been stricken to make the language consistent with the statutory definition of "proceeding," which includes an action.

Section 9 amends G.S. 36C-2-205 to add a new subsection (g1) to clarify how a notice to transfer a proceeding brought before the clerk under G.S. 36C-2-203(a)(9) to superior court must be filed and served.

Section 9.1 creates a new subsection (i) to G.S. 36C-2-205 to provide that the Attorney General shall be given notice of every trust proceeding related to a charitable trust and may participate in the action.

Section 10 amends G.S. 36C-2-205(h) to clarify that the subsection applies to transfers of clerk matters to superior court.

Section 11 amends G.S. 36C-3-303 to make clear that (i) representation does not apply to matters outside the trust and (ii) the trustee may not bind a beneficiary in matters concerning a dispute with the trustee. In addition, subsection (2) of G.S. 36C-3-303 is deleted because of the limited powers conferred upon a guardian of the person under Chapter 35A.

Sections 12 and 13 amend G.S. 36C-3-304 and G.S. 36C-3-305 to change the word "incapacitated" to "incompetent" in order to be consistent with other Code references. In addition, the phrase "with respect to the particular question or dispute" is added to clarify that the conflict of interest must be with respect to the particular question or dispute.

Section 14 amends G.S. 36C-4-401 which currently provides that a trust may be created by "other dispositions taking effect upon the settlor's death." It is revised to clarify that dispositions include devises and bequests to trustees as provided in G.S. 31-47 and the designation of the trust as beneficiary of death benefits as provided in G.S. 36C-4-401.1.

Section 15 amends G.S. 36C-4-409 to clarify how assets in a noncharitable trust without an ascertainable beneficiary are distributed upon termination of the trust.

Section 16 amends G.S. 36C-4-410(b) to clarify that there is no requirement that a trust combination or division under G.S. 36C-4-417 must be accomplished by judicial order.

Section 17 amends G.S. 36C-4-411 to (i) clarify the procedure that must be followed to obtain court appointment of a guardian ad litem for a non-judicial modification or termination of a trust where Article 3 representation cannot be had and (ii) make clear that a guardian of a settlor may consent to certain trust modifications without revoking a power of attorney granted by the settlor to another person. In addition, subdivision (3) of G.S. 36C-4-411(a) is deleted because of the limited powers conferred on a guardian of the person under Chapter 35A. It is also amended to add new subsections (f) and (g). These subsections were part of North Carolina's old Modification and Termination of Irrevocable Trust Act (former G.S. 36A-125.5) and were inadvertently left out of the Uniform Trust Code.

Section 17.1 removes the requirement of notification of the Attorney General in a Cy pres proceeding. Notification of the AG is placed in G.S. 36C-2-205, Section 7.1 of this bill.

Section 18 amends G.S. 36C-G.S. 36C-4-418 to (i) clarify which specific statutes and subsections are subject to the rules in this statute governing distribution of assets upon termination of a trust and (ii) to delete the language regarding distributing trust property for a minor to a guardian, UTMA account or Chapter 33B custodial account. This language already appears in 36C-8-816.

Section 19 amends G.S. 36C-5-501(b) to clarify that subsection (a) concerning the rights of creditors to reach a beneficiary's interest do not apply to the extent that the beneficiary's interest is "protected or restricted by" a spendthrift provision, discretionary trust interest or protective trust interest. Article 5 of Chapter 36C provides for exceptions to protection of the beneficiary's interest. It was thought that the current wording of G.S. 36C-5-501(b) without the added words "protected or restricted by" could be construed as indicating that these exceptions did not apply to subsection (a).

Section 20 amends G.S. 36C-5-505(a) by adding a new subdivision (2a) to clarify that the trustee's discretionary authority to pay the tax on a trust's income or principal payable by the settlor is not an amount that can be distributed to or for the settlor's benefit within the meaning of G.S. 36C-5-505(a)(2a). In addition, the phrase "subject to other applicable law" was added at the beginning of subsection (a) in order to make clear that adoption of the Uniform Trust Code does not change existing North Carolina law on exemptions from creditors such as life insurance and homestead protections. In addition, G.S. 36C-5-505(b) is rewritten to clarify the meaning with respect to powers of withdrawal over property exercisable by a holder of the power other than the settlor.

Sections 21-23 repeal G.S. 36C-6-602(e) and (f) relating to the exercise of the settlor's powers by an agent or guardian with respect to the revocation and amendment of a revocable trust and distribution of the trust property. These provisions are restated in a new section G.S. 36C-6-602A. In addition, the new section G.S. 36C-6-602A clarifies that an agent may exercise a settlor's powers with respect to "additions to" a revocable trust and also provides that an agent may exercise the settlor's powers with respect to creation of a revocable trust. A general guardian or guardian of the estate may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24). These provisions are placed in the new section G.S. 36C-6-602A because they deal with more than just revocation or amendment of a revocable trust which is the subject of G.S. 36C-6-602.

Section 24 amends G.S. 36C-6-603 to (i) revise the title to clarify the effect of the statute and (ii) to make clear that a third party who takes a direction from a person who is both a settlor and trustee of a revocable trust may rely on that direction as that of a settlor with the power to control that revocable trust.

Section 25 creates G.S. 36C-6-605 which makes the anti-lapse statute applicable to trusts. The statute sets the rules governing how a devise to a beneficiary of a revocable trust will be distributed (absent contrary intent in the terms of the trust) if the beneficiary predeceases the settlor.

Section 26 creates G.S. 36C-6-606 makes applicable to revocable trusts the rule that provisions in a will in favor of a spouse are revoked if the testator and the spouse divorce.

Section 26.1 creates G.S. 36C-6-607 which clarifies that a revocable trust may be modified by court order, but the settler is a necessary party.

Sections 27-29 amend G.S. 36C-7-703 to clarify the authority of multiple trustees. As revised, all trustees must exercise reasonable care with respect to actions of other trustees. A co-trustee who does not join in an action by other trustees, however, is not liable for that action. A trustee who is outvoted will not be liable for acquiescing (for example, by signing a deed the majority wants to sign) *unless* the outvoted trustee knows the majority action involves intentional misconduct or improper benefits to other trustees.

Section 30 amends G.S. 36C-7-704(d) to clarify that if a trust is a split-interest trust, the qualified beneficiaries (both charitable beneficiaries and individual beneficiaries) have the right to appoint a successor trustee by majority vote.

Section 31 amends G.S. 36C-8-802(d) to clarify that although a trustee's duties to a beneficiary extend to dealings outside the trust, the trustee may provide goods or services to the beneficiary outside the trust in the ordinary course of business on terms and conditions similar to those offered trustee's other customers.

Section 32 amends G.S. 36C-8-802(f)(1) to clarify that if a trust invests in a fund, that fund may receive services from the trustee's affiliate as well as the trustee, and further clarify that a trustee or an affiliate who provides services to the fund may receive compensation for those services, provided that the investment meets the requirements of the prudent investor rule. G.S. 36C-8-802(f)(2) is also amended to clarify that reasonable compensation for services rendered to a trust needs to be standard, but not necessarily standard in the community. (A trust might be in a place where those services are not usually rendered).

Section 33 amends G.S. 36C-8-802(h) to clarify that the general fairness standard applies to transactions between trusts, and that other specific statutory standards apply to particular dealings between trustee and beneficiary.

Section 34 amends G.S. 36C-8-808 to (i) clarify that a settlor's power to direct a revocable trust includes a direction the trust does not specifically authorize and (ii) to insert a missing word.

Section 34.1 amends G.S. 36C-8.810(d) to allow a trustee to invest and administer the assets of more than one trust provided the trustee keeps separate records.

Section 35 amends G.S. 36C-8-813 to clarify a beneficiary's rights to information about the trust. All current beneficiaries must receive a regular statement. But all "qualified beneficiaries" (current beneficiaries and remaindermen) can receive information on request. The act also repeals subsection (d) making the provisions applicable to all trusts regardless of when the trust was created.

Section 36 amends G.S. 36C-8-814(b) to clarify that an express reference to this subsection must be made for its rules not to apply and to add subsection (b)(4) the provisions of which appeared in the prior statute dealing with the same subject and was inadvertently omitted in bringing forward prior provisions.

Section 37 amends G.S. 36C-8-816(19) thru (19c) to clarify that a trustee may guarantee loans and pledge property to guarantee loans made to any beneficiary or to an enterprise in which the beneficiary has an ownership interest. Also amends subdivision (21) to clarify that a trustee would have the power to apply distributions for a beneficiary's benefit even though the beneficiary may not be under a legal

disability except that a beneficiary must consent to the application for the beneficiary's benefit of any amount required to be paid to the beneficiary.

Section 37.1 creates 36C-9-903A regarding a trustee's duties as to a contract of life insurance on the life of the settlor. These provisions are identical to current G.S. 32-71(c) and (d) which are repealed later in this act.

Sections 38- 42 regarding Article 6 of Chapter 32 relating to trustee compensation is revised generally to make uniform the provisions in the General Statutes concerning notices to beneficiaries of trusts. Specifically:

> **Section 38** amends G.S. 32-53 and the definitions of "beneficiary" and "representative" to whom notice must be given to conform these definitions to the clearer and more comprehensive provisions in Chapter 36C.
>
> **Section 39 and 41** amend G.S. 32-55(c) to make the provisions concerning when notice is deemed given the same as provided in Chapter 37A concerning the notice when a trust is proposed to be converted to a total return trust. G.S. 32-55(d) is amended to make the provisions of G.S. 36C-1-109 regarding notices apply for purposes of Article 6 of Chapter 32. G.S. 32-55(a) and 32-57 are revised to clarify that those provisions apply only if the terms of the trust do not specify a trustee's compensation.
>
> **Section 40** amends G.S. 32-56 to clarify who may initiate a proceeding under G.S. 32-57 for review of the reasonableness of a trustee's compensation if the terms of the trust do not specify compensation.
>
> **Section 42** amends G.S. 32-58 to add provisions concerning reimbursement for expenses and liens which were part of the Uniform Trust Code that should have been made a part of Chapter 32.

Section 43 repeals G.S. 32-71(c) and (d) regarding a trustee's responsibility regarding a life insurance contract on the life of the settlor. This language is moved to Section 37.1 of this act.

Section 44 amends G.S. 37A-1-104(c)(8) to permit a trustee to make an adjustment between income and principal when trustee compensation is defined as a percentage of trust income. Total return investing pursuant to the prudent investor rule recognized by Chapter 37A can result in a substantial reduction in (i) distributions to beneficiaries entitled to receive the trust's ordinary income and (ii) trustee's fees calculated as a percentage of such income. To enable the trustee to invest for total return without having to realize a portion of the return in the form of ordinary income, Chapter 37A authorizes adjustments between income and principal with respect to income beneficiaries, and for the same reasons the same kind of adjustment should be authorized with respect to trustee's fees calculated on income although fees so calculated are now rare.

Sections 45-46 amend Part 2 of Chapter 37A, Conversion to Unitrust, generally to make uniform in the General Statutes the provisions concerning notices to beneficiaries of trusts. Specifically, in G.S. 37A-1-104.1, the definitions of beneficiaries of a trust to whom notices must be given and who may represent the beneficiaries is revised to conform these provisions to those in Chapter 36C. The revised definitions

are applied throughout Part 2. Also G.S. 37A-1-104.2(d) is added to make the provisions regarding notices to beneficiaries in Chapter 36C apply to Part 2.

Section 47 amends G.S. 37A-1-104.3 to correct an incorrect citation and insert correct terminology.

Section 48 amends G.S. 37A-1-104.4 to clarify that assets such as a residence or tangible personal property used by the beneficiary may be excluded from the trustee's annual calculation of the fair market value of the trust property.

Section 49 amends G.S. 37A-1-104.4(b) to correct some terminology.

Section 49.1 repeals G.S. 37A-1-104.7 regarding marital deduction trusts. Existing law gave the spouse the right to compel for the spouse's lifetime a conversion of the trust from an income trust to a total return unitrust or the reconversion of the trust from a total return unitrust to an income trust.

Section 50 amends G.S. 37A-1-104.9 to correct some terminology.

Section 51 amends G.S. 53-163.2 to correct an incorrect citation.

Section 52 amends G.S. 35A-1251(24) to allow a guardian of the estate to petition the court for approval to allow the guardian of the estate to revoke or amend a revocable trust created by the guardian's ward, to make additions to or withdrawals from any such trust or to distribute property from the trust. The guardian of the estate cannot exercise these powers in a manner that would alter the designation of beneficiaries to receive the ward's property upon the ward's death.

EFFECTIVE DATE: The act becomes effective October 1, 2007, and applies to all trusts created before, on, or after that date; all judicial proceedings concerning trusts commenced on or after that date; and all judicial proceedings concerning trusts commenced before that date unless the application of the act would substantially interfere with the effective conduct of the court or prejudice the rights of the parties, in which case the law as it existed on September 30, 2007 shall apply.

S0947e1-SMRC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 5, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 543	UNC Public Records Amendments.-AB	Senator Hartsell
SB 777	Amend CPA Criminal Punishment.	Senator Goodall
SB 947	Uniform Trust Code Changes.	Senator Hagan

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, April 5, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 543	UNC Public Records Amendments.-AB	Senator Hartsell
SB 777	Amend CPA Criminal Punishment.	Senator Goodall
SB 947	Uniform Trust Code Changes.	Senator Hagan

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 5, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 5, 2007, with fifteen members present. Senator Hartsell introduced the pages Carletta Wilkins, Jessica Nguyan, and Regina Stepney and thanked them for their service.

SB 947 (Uniform Trust Code Changes) Senator Hartsell asked for a motion to consider the Proposed Committee Substitute for purposes of discussion. Senator Jacumin so moved, all voted and the motion carried. Senator Hagan was recognized to explain the bill. She then requested that Mr. Knox Proctor, representing the North Carolina Bar Association explain the technical changes. Questions from Senators Kerr and Bingham were answered by Senator Hagan, Mr. Proctor and Ms. Kory Goldsmith, Staff Attorney. Senator Apodaca moved for a favorable report to the Committee Substitute, unfavorable as to the original bill. All voted and the motion carried.

SB 777 (Amend CPA Criminal Punishment) Senator Hartsell noted that Senator Goodall wished to withdraw his amendment that was offered at the April 3rd. meeting and asked for a motion to recall the amendment. Senator Apodaca moved to reconsider the adoption of the amendment, all voted and the motion carried. Senator Goodall then offered a new amendment. Senator Kerr moved to adopt the new amendment. All voted and the motion carried. Senator Dorsett moved to give the bill a favorable report as amended, rolled into a new Committee Substitute unfavorable as to the original bill. All voted and the motion carried.

SB 543 (UNC Public Records Amendments.-AB) As this was Senator Hartsell's bill, he asked Senator Allran to preside. Senator Hartsell moved to adopt an amendment. Senator Bingham so moved, all voted and the motion carried. Senator Hartsell was recognized to explain the bill as amended. Ms. Leslie Winner, Vice President and General Counsel of the University of North Carolina, was recognized to explain the need for the bill as amended. Mr. John Bussian, representing the North Carolina Press Association spoke on the bill. After a brief discussion, Senator Bingham moved for a favorable report on the bill as amended, rolled into a Committee Substitute unfavorable as to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr. Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 5, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Knox Thorson	Ward and Smith, P.A. New Bern, NC
T.J. Taaffe	self
Henry Read	self
Mark West	ADC
Jim Walker	NC Assn of CPAs
Bob Borodach	NC St Bd of CPA Examiners
Rob Willis	UNC
R. Paul Wiles	NCMBA
Steve Farmer	UNC-Chapel Hill
Walter Turner	UNC
Dennis Patterson	OSC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 5, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tam Ngo	Senator Hagan
Henry Jones	Attorney - Raleigh
JOHN BUSSIAN	NC Press Assn.
Gerald Anderson	Buncombe County Commissioners Candler NC
Kathy Rhodarmer	Buncombe County Candler NC
Don Yelton	Citizen Buncombe County
Jim Blackburn	NC Association of County Commissioners
Glen Girton	" "
Daniel Baum	Kennedy Covington
Patrick Buffkin	Nelson Mullins

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 543*

Short Title:	UNC Public Records Amendments.-AB	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary ll (Criminal).	

March 7, 2007

A BILL TO BE ENTITLED

AN ACT MODIFYING THE PUBLIC RECORDS LAWS APPLICABLE TO THE UNIVERSITY OF NORTH CAROLINA, TO PROTECT THE PRIVACY OF APPLICANTS WHO ARE NOT ADMITTED OR WHO DO NOT ENROLL, AND TO PROVIDE THAT CERTAIN AUDIT RECORDS ARE PUBLIC DOCUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.1 is amended by adding a new subsection to read:

"(f) Personally Identifiable Admissions Information. – Records maintained by the University of North Carolina, any of its constituent institutions, or by any community college, which contain personally identifiable information from or about an applicant for admission to one or more constituent institutions of the University or to one or more community colleges shall be confidential and shall not be subject to public disclosure pursuant to G.S. 132-6(a). Notwithstanding the preceding sentence, any letter of recommendation or record containing a communication from an elected official to the University of North Carolina, any of its constituent institutions, or to a community college, concerning an applicant for admission who has not enrolled as a student shall be considered a public record subject to disclosure pursuant to G.S. 132-6(a). Nothing in this subsection is intended to limit the disclosure of public records that do not contain personally identifiable information including aggregated data, guidelines, instructions, summaries, or reports that do not contain personally identifiable information or from which it is feasible to redact any personally identifiable information that the record contains."

SECTION 2. G.S. 116-40.7(c) reads as rewritten:

"(c) An internal auditor shall maintain, for 10 years, a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the internal auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of that auditor's office shall be retained in accordance with Chapter 132 of the General Statutes. To promote

cooperation and avoid unnecessary duplication of audit effort, audit work papers related to issued audit reports shall be, unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal governments in connection with some matter officially before them. Except as otherwise provided in this subsection, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential and shall not be open to examination or inspection under ~~G.S. 132-6.~~ G.S. 132-6 until completion of the audit report that is based on the working paper. Audit reports and the working papers on which they are based shall be public records subject to examination and inspection to the extent that they do not include information that, under State ~~laws,~~ law, is confidential and exempt from Chapter 132 of the General Statutes or would compromise the security systems of The University of North Carolina. At the time that audit working papers are made available for public examination or inspection, the custodian of the audit working paper may redact the name and personally identifying information of any whistleblower or other person who has initiated an allegation of a violation or impropriety if that person requests that the person's name and personally identifying information be kept confidential."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 543:
UNC Public Records Amendments.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 5, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 543 would exempt from public disclosure documents related to applications for admission to The University of North Carolina (UNC) or the North Carolina Community College system from public disclosure if the documents contain personally identifiable information. It would also amend G.S. 116-40.7 to make working papers of completed UNC audit reports subject to public disclosure.

CURRENT LAW:

Public Records - All documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions are considered to be public records.[1] Public records are the property of the people of North Carolina and, unless otherwise designated, are open for inspection and review.

Student records - Most documents related to applications for admission to The University of North Carolina or a North Carolina community college are considered to be public records.[2] A student's educational records are not required to be disclosed because they are protected by The Family Educational Rights and Privacy Act (FERPA).[3] However, under FERPA, an applicant is not considered a "student" until the applicant is admitted to and attends the institution.[4] Once an applicant is admitted and attends, that student's application records become "educational records," and are protected from disclosure. Application materials of applicants who are denied admission, who are admitted but do not enroll, whose applications are still under consideration, or who have been admitted but have not yet enrolled are not protected by FERPA.

Materials received from another educational institution, such as high school transcripts and counselor and teacher recommendations, are protected by FERPA.[5] Designated identifying information such as social security numbers and credit card numbers are required to be kept confidential under State law.[6]

Internal Audits of The University of North Carolina - G.S. 116-40.7 requires The University of North Carolina to have an internal auditor to provide independent reviews and analyses of various functions and programs within the UNC system. The purpose of the audits is to provide management information to promote accountability, integrity, and efficiency. The completed audit reports are public records open to inspection and review, the working papers are not confidential and not subject to disclosure.

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[1] G.S. 132-1(a).
[2] G.S. 132-1.
[3] 20 U.S.C. § 1232g; 34 CFR Part 99.
[4] See 34 CFR §99.3.
[5] 34 CFR §§99.31(a)(2) and 99.33.
[6] See NCGS §132-1.10(b) and §14-113.20(b).

BILL ANALYSIS:

Section 1 would amend G.S. 132-1.1 to exempt from public disclosure records maintained by UNC, its constitute institutions, the Community Colleges System Office and community colleges, if the records contain personally identifiable information from or about an applicant for admission. A letter or communication from an elected official concerning an applicant for admission would be subject to disclosure.

Section 2 would amend G.S. 116-40.7(c) to provide that the work papers that are the basis for an audit report will be open to inspection and review, but only after the audit report has been completed. It would also allow the custodian of the work papers to redact the name and personally identifying information of any person who initiated an allegation of a violation or impropriety if that person requests that his or her name and personally identifying information be kept confidential.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 543*

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

S543-ARC-17 [v.2]

Date _____,2007

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

Senator _____

moves to amend the bill on page 1, line 3, by deleting the word "CAROLINA," and substitute the phrase:

"CAROLINA AND THE NORTH CAROLINA COMMUNITY COLLEGES,";

and on page 1, by rewriting lines 9 and 10 to read:

"(f) Personally Identifiable Admissions Information. – Records maintained by The University of North Carolina or any constituent institution, or by the Community Colleges System Office or any community";

and on page 1, line 12, by deleting the phrase "of the University";

and on page 1, line 23, by adding after the period the following:

"As used in this subsection, the term "community college" is as defined in G.S. 115D-2(2), the term "constituent institution" is as defined in G.S. 116-2(4), and the term "Community Colleges System Office" is as defined in G.S. 115D-3.";

and on page 2, by rewriting lines 14-18 to read:

"may redact the name and personally identifying information of a person who has initiated an allegation of (i) a violation of State or federal law or rule or regulation; (ii) fraud; (iii) misappropriation of State resources; (iv) substantial and specific danger to the public health and safety; or (v) gross mismanagement, gross waste of monies, or gross abuse of authority, if that person"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 543*

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

S543-ARC-17 [v.2]

SECTION 3. This act is effective when it becomes law and applies to public records existing before, on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 777*

Short Title:	Amend CPA Criminal Punishment.	(Public)
Sponsors:	Senators Goodall; Apodaca and Hoyle.	
Referred to:	Judiciary II (Criminal).	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR VIOLATING CERTAIN LAWS REGULATING CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93-13 reads as rewritten:

"**§ 93-13. Violation of Chapter; penalty.**

~~Any violation of the provisions of this Chapter shall be deemed a Class 3 misdemeanor, and upon conviction thereof the guilty party shall only be fined not less than one hundred dollars ($100.00) and not exceeding one thousand dollars ($1,000) for each offense.~~A violation of G.S. 93-3, 93-4, 93-5, or 93-6 shall be a Class 1 misdemeanor. Each violation shall constitute a distinct and separate offense."

SECTION 2. This act becomes effective December 1, 2007, and applies to violations occurring on or after that date.

SENATE BILL 777:
Amend CPA Criminal Punishment

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 3, 2007
Introduced by:	Sen. Goodall	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 777 would increase the criminal penalty for the unlawful use of the title "certified public accountant" (CPA) from a Class 3 misdemeanor to a Class 1 misdemeanor.

CURRENT LAW: Chapter 93 of the General Statutes, which governs the certification and practice of accounting, provides that use of the title "certified public accountant" without a certificate of qualification to practice as a CPA is a Class 3 misdemeanor. A violation is punishable only by a fine of not less than $100.00 and not more than $1,000.

BILL ANALYSIS: The bill would amend G.S. 93-13 to change the criminal punishment for violation of statutes governing the unlawful use of the title "certified public accountant" by an individual, firm, or corporation, from a Class 3 misdemeanor to a Class 1 misdemeanor. Under the bill, each violation constitutes a distinct and separate offense.

BACKGROUND: Under Structured Sentencing, unless otherwise specified, punishment for a Class 1 misdemeanor, depending on prior conviction history, ranges from a minimum of 1 to 45 days of community punishment up to a maximum of 1 to 120 days of community, intermediate, or active punishment, and unlimited fines in the discretion of the court.

Increasing the punishment for violation of these statutes governing CPAs from a Class 3 misdemeanor to a Class 1 misdemeanor is consistent with other similar licensing board violations including the State Bar, the Medical Board, and the Board of Pharmacy, except with respect to the language that makes each violation a distinct and separate offense.

EFFECTIVE DATE: The bill would become effective December 1, 2007 and would apply to offenses committed on or after that date.

O. Walker Reagan, counsel to Senate Commerce, substantially contributed to this summary.

S0777e1-SMRI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 777*

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

S777-ARI-6 [v.1]

Date 4/5 ,2007

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

Senator Goodall

moves to amend the bill on page 1, line 11, by rewriting that line to read:
"misdemeanor.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 777*

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

S777-ARI-6 [v.1]

Date 4/5 ,2007

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

Senator Goodall

moves to amend the bill on page 1, line 11, by rewriting that line to read:
"misdemeanor.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 947

Short Title:	Uniform Trust Code Changes.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Judiciary II (Criminal).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE UNIFORM TRUST CODE AND OTHER RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-13-3(a)(5) reads as rewritten:

"(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent ~~man~~ person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including ~~but not limited to~~ the powers specified in the following subdivisions:

...

(5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative ~~upon compliance with the provisions of G.S. 36A-63.~~ pursuant to G.S. 53-163.1.

...."

SECTION 1.1. Chapter 32A of the General Statutes is amended by adding a new Article to read:

"Article 2C.

"Limitations on Authority of Attorney-in-Fact.

"**§ 32A-14.13. Limitations on authority of attorney-in-fact.**

(a) Notwithstanding any provision in this Chapter to the contrary, an attorney-in-fact may not:

(1) Perform duties under a contract that requires the exercise of personal services of the principal;

(2) Make any affidavit as to the personal knowledge of the principal;

(3) Vote in any public election on behalf of the principal;

(4) Execute or revoke any will or codicil for the principal; or

(5) Exercise the powers with respect to a revocable trust set forth in G.S. 36C-6-602A(a) if the exercise of such powers would alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(b) This section is not intended to apply to or impair in any way the power of an attorney-in-fact to make gifts of the principal's property, which power is governed by Article 2A and 2B of this Chapter."

SECTION 1.2. G.S. 36B-8 reads as rewritten:

"**§ 36B-8. Conflict with other law.**

To the extent that the provisions of this Chapter are inconsistent with the provisions of either Chapter ~~36A~~ 36C or Chapter 55A, the provisions of this Chapter shall control. The provisions of this Chapter shall not apply to the University of North Carolina."

SECTION 2. G.S. 36C-1-103 reads as rewritten:

"**§ 36C-1-103. Definitions.**

~~In this~~ The following definitions apply in this Chapter:

(1) ~~"Action", with respect~~ Action. – When applicable to an act of a trustee, includes a failure to act.

(2) ~~"Ascertainable standard" means a~~ Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) ~~"Beneficiary" means a~~ Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property.

(4) ~~"Charitable trust" means a~~ Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).

(5) ~~"Environmental law" means a~~ Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) ~~"General guardian" means a general guardian as that term is~~ General guardian. – As defined in G.S. 35A-1202(7).

(7) ~~"Guardian of the estate" means a guardian of the estate as that term is~~ Guardian of the estate. – As defined in G.S. 35A-1202(9).

(8) ~~"Guardian of the person" means a guardian of the person as that term is~~ Guardian of the person. – As defined in G.S. 35A-1202(10).

(9) ~~"Interests of the beneficiaries" means the~~ Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.

(10) ~~"Internal Revenue Code" means the~~ Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each

reference to a provision of the Internal Revenue Code shall include any successor to that provision.

(11) ~~"Jurisdiction", with respect~~ Jurisdiction. – When applicable to a geographic area, includes a state or country.

(12) ~~"Person" means an~~ Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(13) ~~"Power of withdrawal" means a~~ Power of withdrawal. – A presently exercisable general power of appointment other than a power:

a. Exercisable by a trustee and limited by an ascertainable standard; or

b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is:

a. The usual place of business of the corporate trustee if there is a corporate cotrustee.

b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.

(14) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(15) ~~"Qualified beneficiary" means a~~ Qualified beneficiary. – A living beneficiary ~~who,~~ to whom, on the date the beneficiary's qualification is ~~determined:~~ determined, any of the following apply:

a. Is a distributee or permissible distributee of trust income or ~~principal;~~ principal.

b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to ~~terminate; or~~ terminate.

c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(16) ~~"Revocable", as applied~~ Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(17) ~~"Settlor" means a~~ Settlor. – A person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the

extent another person has the power to revoke or withdraw that portion.

(18) ~~"Spendthrift provision" means a~~ Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(19) ~~"State" means a~~ State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(20) ~~"Terms of a trust" means the~~ Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.

(21) ~~"Trust instrument" means an~~ Trust instrument. – An instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.

(22) ~~"Trustee" includes~~ Trustee. – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts."

SECTION 3. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under G.S. 36C-10-1008;

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary;

(8) Periods of limitation for commencing a judicial proceeding;

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice; ~~and~~

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204.~~ G.S. 36C-2-204; and

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602A(a) shall not alter the designation of beneficiaries to

receive property on the settlor's death under that settlor's existing estate plan."

SECTION 4. G.S. 36C-1-107 reads as rewritten:

"(a) The meaning and effect of the terms of a trust are determined ~~by:~~ by any of the following:

(1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at ~~issue; or~~ issue.

(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) Notwithstanding subsection (a) of this section, the rights of a person other than a trustee or beneficiary are governed by G.S. 36C-10-1010 through G.S. 36C-10-1013."

SECTION 5. G.S. 36C-1-109(a) reads as rewritten:

"(a) Notice to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

Notice shall be deemed to be given when any of the following occur:

(1) When personally delivered by hand to the person.

(2) When transmitted by facsimile.

(3) When placed in the hands of a nationally recognized courier service for delivery.

(4) When received by the person if sent by registered or certified United States mail, return receipt requested.

(5) Three days after depositing the same in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail.

Delivery by any means other than those described in subdivisions (1) through (5) of this subsection shall be deemed to be delivered, given, and received for all purposes as of the date of the actual receipt."

SECTION 6. G.S. 36C-2-203(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a ~~trustee;~~ trustee, including the appointment and removal of a trustee pursuant to G.S. 36C-4-414(b).

(2) ~~To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk of superior court, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee is required to initiate a proceeding to resign or renounce as trustee;~~ To approve the resignation of a trustee.

(3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final ~~accounts;~~ accounts.

(4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in ~~G.S. 37A-1-104.3;~~ G.S. 37A-1-104.3.

(5) To transfer a trust's principal place of ~~administration;~~ administration.

(6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different ~~sureties;~~ sureties.

(7) To make orders with respect to a trust for the care of animals as provided in ~~G.S. 36C-4-408;~~ G.S. 36C-4-408.

(8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in ~~G.S. 36C-4-409; and~~ G.S. 36C-4-409.

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. ~~Upon motion of a party, the clerk of superior court may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court division of the General Court of Justice.~~ Any party may file a notice of transfer of a proceeding pursuant to this subsection to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article."

SECTION 7. G.S. 36C-2-203(c) reads as rewritten:

"(c) Nothing in this section affects the right of a person to file an action in the superior court division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. ~~In the event either the petitioner or respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter~~

~~1 of the General Statutes, either party may move for a transfer of the proceeding to the superior court division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent consistent with this Article.~~"

SECTION 8. G.S. 36C-2-204 reads as rewritten:

"**§ 36C-2-204. Venue.**

In any trust ~~proceeding or action,~~ proceeding, whether brought before the clerk of superior court or the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

(1) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.

(2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts ~~is:~~ is either of the following:

a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary ~~resides; or~~ resides.

b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.

~~(3) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:~~

~~a. The usual place of business of the corporate trustee if there is but one corporate or cotrustee; or~~

~~b. The usual place of business or residence of any of the cotrustees.~~

(4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or ~~if the trust is created by will,~~ in the case of a testamentary trust, in the county in which the decedent's estate was or is being administered."

SECTION 9. G.S. 36C-2-205 is amended by adding a new subsection to read:

"(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred."

SECTION 9.1. G.S. 36C-2-205 is amended by adding a new subsection to read:

"(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard."

SECTION 10. G.S. 36C-2-205(h) reads as rewritten:

"(h) Orders Upon ~~Consolidation/Joinder.~~ Consolidation/Joinder/Transfer. – Upon the consolidation of a trust proceeding and ~~civil action or~~ a civil action, joinder of claims under subsection (f) or (g) of this ~~section~~ section, or transfer to the superior court division of the General Court of Justice pursuant to subsection (g1) of this section, the clerk of superior court or the judge may make ~~such~~ appropriate orders ~~as appropriate~~ to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the ~~consolidation or joinder~~ consolidation, joinder of claims under subsection (f) or (g) of this section, or transfer to the superior court division of the General Court of Justice under subsection (g1) of this section, the clerk of superior court's exclusive jurisdiction as set forth in ~~G.S. 36C-2-203(a)~~ G.S. 36C-2-203(a)(1) through (8) shall not be stayed unless so ordered by the court."

SECTION 11. G.S. 36C-3-303 reads as rewritten:

"§ 36C-3-303. Representation by fiduciaries, parents, and other persons.

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or ~~dispute:~~ dispute involving a trust:

(1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.

(2) ~~A guardian of the person may represent and bind the ward if a general guardian or guardian of the estate of the ward's estate has not been appointed.~~

(3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.

(4) A trustee may represent and bind the beneficiaries of the ~~trust.~~ trust unless the question or dispute involves the internal affairs of the trust.

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(6) A parent may represent and bind the parent's minor child if a general ~~guardian,~~ guardian or guardian of the ~~estate, or guardian of the person~~ estate for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.

(7) A person may represent and bind that person's unborn issue."

SECTION 12. G.S. 36C-3-304 reads as rewritten:

"**§ 36C-3-304. Representation by person having substantially identical interest.**

Unless otherwise represented under this Article, a minor, an ~~incapacitated~~ incompetent or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person ~~represented.~~ represented with respect to the particular question or dispute."

SECTION 13. G.S. 36C-3-305(a) reads as rewritten:

"(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, ~~incapacitated~~ an incompetent or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests."

SECTION 14. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created ~~by:~~ by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's ~~death;~~ death, including either of the following:

a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by ~~law; or~~ law.

(3) Exercise of a power of appointment in favor of a trustee."

SECTION 15. G.S. 36C-4-409 reads as rewritten:

"**§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

Except as otherwise provided in G.S. 36C-4-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years. If the trust is still in existence after 21 years, the trust shall terminate, and the unexpended trust property shall be transferred in the following order:
   a. As directed in the trust instrument.
   b. If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.
   c. If no taker is produced by the application of sub-subdivisions a. or b. of this subdivision, to the settlor, if then living, otherwise to the settlor's heirs as determined under Chapter 29 of the General Statutes as of the date of the settlor's death.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent that the court determines that the value of the trust property exceeds the amount required for the intended use. ~~Except as otherwise provided in the terms of the trust,~~ The property not required for the intended use ~~must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.~~ shall be distributed under subdivision (1) of this section.

(4) Notwithstanding subdivisions (1) through (3) of this section, a trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust, provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This section does not repeal or supersede G.S. 36C-4-413."

SECTION 16. G.S. 36C-4-410 reads as rewritten:

"**§ 36C-4-410. Modification or termination of trust; proceedings for approval or disapproval.**

(a) In addition to the methods of termination prescribed by G.S. 36C-4-411 through G.S. 36C-4-414, a trust terminates to the extent that the trust is revoked or expires under its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411 through ~~G.S. 36C-4-416, or trust combination or division under G.S. 36C-4-417.~~ G.S. 36C-4-416. A settlor may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a necessary party to any proceeding under this ~~section.~~ Article.

(c) Repealed by Session Laws 2006-259, s. 13(c), effective October 1, 2006."

SECTION 17. G.S. 36C-4-411 reads as rewritten:

"**§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.**

(a) ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries,~~ If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they may compel the modification or termination of the trust without the approval of the court even if the modification or termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any competent adult beneficiary or the representative of any beneficiary properly represented under Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad litem. The court shall allow the modification or termination if the court finds that, following the appointment of a guardian ad litem, all beneficiaries or their representatives have consented. A settlor's power to consent to a trust's modification or termination may be exercised ~~by~~ by:

(1) ~~an~~ An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the ~~trust; by the~~ trust.

(2) The settlor's general guardian or the guardian of the estate with the approval of the court supervising the ~~guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the court supervising the guardianship if an agent is not so authorized and a general guardian or guardian of the estate has not been appointed.~~ guardianship.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries, if the court concludes that modification is consistent with a material purpose of the trust.

(c) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for

modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c) of this section, the modification or termination may be approved by the court if the court is satisfied ~~that:~~ that all of the following apply:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this ~~section; and~~ section.

(2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Repealed by Session Laws 2006-259, s. 13(d), effective October 1, 2006.

(f) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust under this section, the presumption of fertility is rebuttable.

(g) If a trust instrument provides for the disposition of property to a class of persons described only as "heirs" or "next of kin" of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances."

SECTION 17.1. G.S. 36C-4-413(c) is repealed.

SECTION 18. G.S. 36C-4-418 reads as rewritten:

"**§ 36C-4-418. Distribution upon termination of trust.**

Upon termination of a trust under ~~G.S. 36C-4-411,~~ G.S. 36C-4-411(a), the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under ~~G.S. 36C-4-412 or G.S. 36C-4-414,~~ G.S. 36C-4-411(b) or (c), the trustee shall distribute the trust property in accordance with the order entered by the court. Upon termination of a trust under G.S. 36C-4-412(a) or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. ~~If any trust property becomes distributable to a minor or incompetent under this Article, it may be distributed:~~

~~(1) To the guardian of the estate or general guardian of the beneficiary;~~

~~(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or~~

~~(3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.~~"

SECTION 19. G.S. 36C-5-501(b) reads as rewritten:

"(b) ~~This~~ Subsection (a) of this section shall not ~~apply~~ apply, and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the extent that a beneficiary's ~~interest:~~ interest is protected or restricted by any of the following:

(1) ~~Is subject to a~~ A spendthrift ~~provision;~~ provision.

(2) ~~Is a~~ A discretionary trust interest as defined in ~~G.S. 36C-5-504(a)(2); or~~ G.S. 36C-5-504(a)(2).

(3) ~~Is a~~ A protective trust interest as described in G.S. 36C-5-508."

SECTION 20. G.S. 36C-5-505 reads as rewritten:

"**§ 36C-5-505. Creditor's claim against settlor.**

(a) ~~Whether~~ Subject to the other applicable law, whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by ~~G.S. 28A-19-3.~~ applicable law.

(b) For purposes of this section, with respect to a power of withdrawal over property of a trust exercisable by a holder of the power other than the settlor of the trust, both of the following shall apply:

(1) The property subject to the exercise of the power shall be subject to the claims of the creditors of the holder only when and to the extent that the holder exercises the power.

(2) The lapse, release, or waiver of a power ~~of withdrawal~~ shall not be deemed to be an exercise of the power and shall not cause the holder to be treated as a settlor of the trust."

SECTION 21. G.S. 36C-6-602(e) is repealed.

SECTION 22. G.S. 36C-6-602(f) is repealed.

SECTION 23. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-602A. Exercise of settlor's powers with respect to revocable trust by agent or guardian.**

(a) An agent acting under a power of attorney may exercise any of the following powers of the settlor with respect to a revocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

(1) Revocation of the trust.

(2) Amendment of the trust.

(3) Additions to the trust.

(4) Direction to dispose of property of the trust.

(5) The creation of the trust, notwithstanding G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this section shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(b) A general guardian or a guardian of the estate of the settlor may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24)."

SECTION 24. G.S. 36C-6-603 reads as rewritten:

"**§ 36C-6-603. Settlor's ~~powers; powers of withdrawal.~~ control of revocable trust.**

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. If a trustee is a settlor, the trustee's actions are presumed to be taken at the direction of the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors."

SECTION 25. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-605. Failure of disposition of property of a trust by lapse or otherwise.**

(a) If a beneficiary under a revocable trust predeceases the execution of the trust or the settlor or is treated as having predeceased the settlor, and if the beneficiary is a grandparent of or a descendant of a grandparent of the settlor, then the issue of the predeceased beneficiary who survive the settlor shall take in place of the deceased beneficiary. The deceased beneficiary's issue shall take the deceased beneficiary's share in the same manner that the issue would take as heirs of the deceased beneficiary under the intestacy provisions in effect at the time of the settlor's death. The provisions of this section apply whether the disposition of property is to an individual, to a class, or is a part of the residue of the trust. In the case of the disposition to a class, the issue shall take whatever share the deceased beneficiary would have taken had the deceased beneficiary survived the settlor. In the event the deceased class member leaves no issue, the deceased beneficiary's share shall devolve upon the members of the class who survived the settlor and the issue of any deceased members taking by substitution.

(b) If the provisions of subsection (a) of this section do not apply to the disposition of property that fails, the property shall pass to the beneficiaries in proportion to their share of the residue of the trust. If the disposition is part of the residue of the trust, it shall augment the shares of the other residuary beneficiaries,

including the shares of any substitute takers under subsection (a) of this section. If there are no residuary beneficiaries, then the property shall pass by intestacy."

SECTION 26. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36-6-606. Revocation of provisions in revocable trust by divorce or annulment; revival.**

Dissolution of the settlor's marriage by absolute divorce or annulment after executing a revocable trust revokes all provisions in the trust in favor of the settlor's former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as trustee. Property prevented from passing to the former spouse because of revocation by divorce or absolute annulment passes as if the former spouse failed to survive the settlor, and other provisions conferring some power or office on the former spouse are interpreted as if the former spouse failed to survive the settlor. If provisions are revoked solely by this section, they are revived by the settlor's remarriage to the former spouse. The reference to "former spouse" in this section includes a purported former spouse."

SECTION 26.1 Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-607. Modification or termination of a revocable trust.**

(a) A revocable trust may be modified or terminated by the court pursuant to any of the methods for modification or termination of an irrevocable trust set forth in G.S. 36C-4-411(b) or (c), G.S. 36C-4-412, G.S. 36C-4-415, or G.S. 36C-4-416.

(b) The settlor is a necessary party to any proceeding brought to modify or terminate a revocable trust."

SECTION 27. G.S. 36C-7-703(f) is repealed.

SECTION 28. G.S. 36C-7-703(g) reads as rewritten:

"(g) ~~Each~~ A trustee shall exercise reasonable ~~care~~ care in connection with matters for which the trustee is given authority under the terms of a trust to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust."

SECTION 29. G.S. 36C-7-703(h) reads as rewritten:

"(h) Notwithstanding subsection ~~(f) or~~ (g) of this ~~section, a trustee who has not joined in an action approved by a majority of the other trustees is not liable for the action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who joins in an action at the direction of the majority of the trustees but who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action, unless that trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action.~~ section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:

(1) The trustee does not join in an action approved by a majority of the other trustees.

(2) The dissenting trustee joins in an action necessary to carry out the decision of the majority of the trustees and notifies in writing the cotrustees of the dissent at or before joining in the action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action."

SECTION 30. G.S. 36C-7-704(d) reads as rewritten:

"(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;

(2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or

(3) By a person appointed by the court."

SECTION 31. G.S. 36C-8-802(d) reads as rewritten:

"(d) A transaction between a trustee and a beneficiary that does not concern trust property, but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary, and from which the trustee obtains an ~~advantage,~~ advantage and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers similarly situated customers, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary."

SECTION 32. G.S. 36C-8-802(f) reads as rewritten:

"(f) Notwithstanding subsection (c) of this section:

(1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under G.S. 36C-8-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined; and

(2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent

with payments generally made ~~in the community~~ for the same or similar services."

SECTION 33. G.S. 36C-8-802(h) reads as rewritten:

"(h) This section does not preclude any of the following ~~transactions, if fair to the beneficiaries:~~ transactions:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the ~~trustee;~~ trustee.

(2) Payment of ~~reasonable~~ compensation to which the ~~trustee;~~ trustee is entitled under G.S. 36C-7-708.

(3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an ~~interest;~~ interest.

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the ~~trustee; or~~ trustee.

(5) An advance by the trustee of money for the protection of the trust."

SECTION 34. G.S. 36C-8-808(a) reads as rewritten:

"(a) While a trust is revocable, the trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust."

SECTION 34.1. G.S. 36C-8-810(d) reads as rewritten:

"(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest and administer as a whole the property of two or more separate trusts."

SECTION 35. G.S. 36C-8-813 reads as rewritten:

"**§ 36C-8-813. Duty to inform and report.**

(a) The trustee is under a ~~duty to a qualified beneficiary to give that beneficiary upon request and at reasonable times complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary, or the beneficiary's representative, to inspect the subject matter of the trust and the accounts and other documents relating to the trust.~~ duty to do all of the following:

(1) Provide reasonably complete and accurate information as to the nature and amount of the trust property, at reasonable intervals, to any qualified beneficiary who is a distributee or permissible distributee of trust income or principal.

(2) In response to a reasonable request of any qualified beneficiary:

a. Provide a copy of the trust instrument.

b. Provide reasonably complete and accurate information as to the nature and amount of the trust property.

c. Allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.

(b) Notwithstanding subsection (a) of this section:

(1) The duty of the trustee under subsection (a) of this section shall not include informing any beneficiary in advance of transactions relating to the trust property.

(2) A trustee is considered to have discharged the trustee's duty under subdivision (1) of subsection (a) of this section as to a qualified beneficiary for matters disclosed by a report sent at least annually and at termination of the trust to the beneficiary that describes the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, and lists the trust assets and their respective market values, including estimated values of assets with uncertain values. No presumption shall arise that a trustee who does not comply with this subdivision failed to discharge the trustee's duty under subdivision (1) of subsection (a) of this section.

(c) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. With respect to future reports and other information, a beneficiary may withdraw a waiver previously given.

~~(d) Subsection (b) of this section applies only to a trust created under a trust instrument executed on or after the effective date of this Chapter.~~"

SECTION 36. G.S. 36C-8-814(b) reads as rewritten:

"(b) Subject to subsection (d) of this section, and unless the terms of the trust ~~expressly~~ indicate by an express reference to this subsection that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power that would, except for this subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.

(2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal ~~benefit,~~ benefit that would, except for this subsection, constitute in whole or in part a general power of appointment, the trustee may exercise the power in accordance with an ascertainable standard.

(3) The trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(4) Any power conferred upon the trustee in the trustee's capacity as a trustee to allocate receipts and expenses as between income and principal in the trustee's own favor must be exercised in accordance with the provisions of Chapter 37A of the General Statutes, the Uniform Principal and Income Act of 2003.

For purposes of this subsection, a "general power of appointment" means any power that would cause the income to be taxed to the trustee in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or section 2514(c) of the Internal Revenue Code."

SECTION 37. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made by others to ~~a~~ any beneficiary;

(19a) Guarantee loans made by others to ~~a~~ any beneficiary;

(19b) Pledge trust property to guarantee loans made by others to ~~a~~ any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

...

(21) Pay an amount distributable to a beneficiary ~~who is under a legal disability~~ regardless of whether the beneficiary is a minor or incompetent or ~~who~~ whether the trustee reasonably believes ~~is incapacitated,~~ the beneficiary to be incompetent, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or if the beneficiary is a minor or incompetent or a person the trustee reasonably believes to be incompetent, by:

a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's ~~estate or, if the beneficiary does not have a general guardian or guardian of the beneficiary's estate, the guardian of the beneficiary's person;~~ estate;

b. Paying it to a custodian under a uniform transfer to minors act or custodial trustee under a uniform custodial trust act and, for that purpose, creating a custodianship or custodial trust for the benefit of the beneficiary;

c. Paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

d. Managing it as a separate fund on the beneficiary's behalf.

A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including ~~the~~ a minor

or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the ~~trustee;~~ trustee. Notwithstanding the foregoing, if a mandatory distribution is to be paid to a beneficiary who is not a minor or incompetent or a person the trustee reasonably believes to be incompetent, such amount may be applied for the beneficiary's benefit only with the beneficiary's consent;

...."

SECTION 37.1. Article 9 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-9-903A. Duties as to life insurance.**

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply."

SECTION 38. G.S. 32-53 reads as rewritten:

"**§ 32-53. Definitions.**

The following definitions apply in this Article:

~~(1) "Beneficiary" means (i) all living persons who are currently receiving or who are eligible to receive distributions of income or principal of the trust and (ii) all living persons who would be entitled to income and/or principal of the trust if the trust were to terminate at the time of the giving of the notice referred to in G.S. 32-55 (without regard to the exercise of any power of appointment).~~

~~(2) "Representative" means, with respect to a beneficiary who is under a legal disability, the beneficiary's agent under a durable power of attorney, general guardian, guardian of the estate, or guardian of the person of a beneficiary, and the parent of a minor beneficiary.~~

~~(3) "Trust" is as defined in G.S. 36A-22.1(5).~~

(1) Legal disability. – A person under a legal disability is a person who is a minor, incompetent, or unborn individual, or whose identity or location is unknown.

(2) Qualified beneficiary. – As defined in G.S. 36C-1-103(15). With respect to a charitable trust defined in G.S. 36C-1-103(4), the term includes (i) a charitable organization described in G.S. 36C-1-110 as

having the rights of a qualified beneficiary; or (ii) if there is no such charitable organization, the Attorney General.

(3) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

(4) Trust. – A trust to which Chapter 36C of the General Statutes applies as provided in G.S. 36C-1-102."

SECTION 39. G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) ~~The trustee shall~~ If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be ~~deemed to be given to the beneficiary only if notice is~~ given to the representative of the beneficiary. ~~If the trustee is the representative of the beneficiary, no notice shall be deemed to have been given to the beneficiary.~~ If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(d) ~~The written notice required under this section shall be deemed to be given as follows: (i) when personally delivered by hand to the person, (ii) when transmitted by facsimile or e-mail with confirmation of transmission, (iii) when placed in the hands of a nationally recognized courier service for delivery, (iv) when received by the person if sent by registered or certified United States mail, return receipt requested, (v) three days after depositing the same in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail. Notices delivered by any other means shall be deemed to be delivered, given, and received for all purposes as of the date of the actual receipt.~~ The provisions of G.S. 36C-1-109 regarding notices to persons under

Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 40. G.S. 32-56 reads as rewritten:

"**§ 32-56. Payment of compensation without court order.**

The trustee is authorized to pay the compensation provided for in G.S. 32-54 without prior approval of the clerk of superior court only if:

(1) The annual amount of compensation does not exceed four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year; or

(2) ~~No beneficiary~~ Notice has been given pursuant to G.S. 32-55 and no qualified beneficiary or representative of a qualified beneficiary has initiated a proceeding under G.S. 32-57 for review of the reasonableness of the compensation within 20 days after notice has been given by the trustee in accordance with G.S. 32-55."

SECTION 41. G.S. 32-57(a) reads as rewritten:

"(a) ~~The trustee or any beneficiary~~ If the terms of the trust do not specify the trustee's compensation, the trustee or any qualified beneficiary, or representative of a qualified beneficiary, may initiate a proceeding under Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 42. G.S. 32-58 reads as rewritten:

"**§ 32-58. Reimbursement for expenses incurred.**

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred or advanced in the administration of the trust and shall be empowered to pay the expenses from the assets of the trust without prior approval of the clerk of superior court. The court may allow reimbursement of other expenses incurred or advanced to which the trustee is entitled in equity and good conscience. The trustee shall have a lien on trust property to secure reimbursement, with reasonable interest, of expenses owed under this section."

SECTION 43. G.S. 32-71(c) and (d) are repealed.

SECTION 44. G.S. 37A-1-104(c)(8) reads as rewritten:

"(c) A trustee shall not make an adjustment:

...

(8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or ~~indirectly; or~~ indirectly, except that a trustee may make an adjustment that also benefits a beneficiary even if the terms of the trust provide for trustee compensation as a percentage of the trust's income; or

...."

SECTION 45. G.S. 37A-1-104.1 reads as rewritten:

"**§ 37A-1-104.1. Definitions.**

~~For purposes of this~~ The following definitions apply to this Part:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

~~(2) "Competent beneficiary" includes:~~

~~a. A beneficiary who has attained the age of 18 and is not otherwise under a legal disability;~~

~~b. A court-appointed guardian of an incompetent beneficiary;~~

~~c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;~~

~~d. A court-appointed guardian of a minor beneficiary's estate; and~~

~~e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.~~

(3) ~~"Disinterested person" means a~~ Disinterested person. – A person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the ~~grantor~~ settlor of the trust and any interested trustee.

~~(4) "Grantor" means an individual who created an inter vivos trust.~~

(5) ~~"Income trust" means a~~ Income trust. – A trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

(6) ~~"Interested distributee" means a~~ Interested distributee. – A living beneficiary who is a distributee or permissible distributee ~~person to whom distributions~~ of trust income or principal ~~can currently be made~~ who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

(7) ~~"Interested trustee" means~~ Interested trustee. – Any of the following:

~~(i)~~a. ~~an~~ An individual trustee ~~to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed,~~ who is a qualified beneficiary.

~~(ii)~~b. ~~any~~ Any trustee who may be removed and replaced by an interested ~~distributee, or~~ distributee.

~~(iii)~~c. ~~an~~ An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(7a) Legal disability. – A person under a legal disability is a person who is a minor, an incompetent, or an unborn individual, or whose identity or location is unknown.

(7b) Qualified beneficiary. – A qualified beneficiary as defined in G.S. 36C-1-103(15).

(8) ~~"Related or subordinate party" means a~~ Related or subordinate party. – A related or subordinate party as defined in section 672(c) of the Code.

(8a) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

(8b) Settlor. – An individual, including a testator, who creates a trust.

(9) ~~"Total return unitrust" means an~~ Total return unitrust. – An income trust that has been converted under and meets the provisions of this Part.

(9a) ~~"Treasury regulations" means the~~ Treasury regulations. – The regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

(10) ~~"Trustee" means any~~ Trustee. – Any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

(11) ~~"Unitrust amount" means an~~ Unitrust amount. – An amount computed as a percentage of the fair market value of the trust."

SECTION 46. G.S. 37A-1-104.2 reads as rewritten:

"**§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if:~~ if all of the following apply:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~policy.

(2) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with~~ including copies of the written policy and this Part, to (i) the ~~grantor~~ settlor of the trust, if living, and ~~(ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ (ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(3) There is at least (i) one ~~competent~~ qualified beneficiary described in ~~subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this subsection~~ G.S. 36C-1-103(15)a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described and (ii) one ~~competent~~ qualified beneficiary described in ~~subdivision (2)(iv) of this subsection;~~ G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(4) No person receiving notice of the trustee's intention to take the proposed action objects to the action within 60 days ~~of receipt of the notice~~ after notice has been given. The objection shall be by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if:~~ if all of the following apply:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter

rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~ policy.

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust ~~amount;~~ amount.

(3) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with~~ including copies of the written policy and this Part, and the determinations of the disinterested person to (i) the ~~grantor~~ settlor of the trust, if living, and (ii) all persons who are the ~~competent~~ qualified beneficiaries ~~who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(4) There is at least one (i) ~~competent~~ qualified beneficiary described in ~~subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this subsection~~ G.S. 36C-1-103(15)a. or b. or a representative of a beneficiary so described and (ii) one ~~competent~~ qualified beneficiary described in ~~subdivision (3)(iv) of this subsection;~~ G.S. 36C-1-103(15)c. or a representative of a qualified beneficiary so described. ~~and~~

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days ~~of receipt of~~ after ~~the~~ notice has been given. The objection must be by written instrument delivered to the trustee.

(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable

purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided ~~that:~~ that all of the following apply:

(1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions ~~(2)~~ (3) and ~~(3)~~ (4) of subsection (b) of this section, as the case may be, the trustee shall send written notice to ~~the named charity or charities~~ each charitable organization expressly designated ~~then entitled~~ to receive the income of the trust under the governing instrument and, if no ~~named charity or charities are~~ charitable organization is expressly designated ~~entitled~~ to receive all of the income of the trust under the governing instrument, to the Attorney General of this ~~State;~~ State.

(2) Subdivision (4) of subsection (a) of this section or subdivision ~~(4)~~ (5) of subsection (b) of this section, as the case may be, shall not apply to this ~~action; and~~ action.

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code.

(d) The provisions of G.S. 36C-1-109 regarding notices and the sending of documents to persons under Chapter 36C of the General Statutes shall apply for purposes of notices and the sending of documents under this section."

SECTION 47. G.S. 37A-1-104.3 reads as rewritten:

"**§ 37A-1-104.3. Conversion with court approval.**

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under ~~G.S. 36A-1-104.2,~~ G.S. 37A-1-104.2, the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A ~~competent~~ qualified beneficiary or a representative of a qualified beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the ~~competent~~ qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

(c) All proceedings under this section shall be conducted as provided in ~~Article 3 of Chapter 36A of the General Statutes.~~ Article 2 of Chapter 36C of the General Statutes."

SECTION 48. G.S. 37A-1-104.4 (a) reads as rewritten:

"(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary ~~also~~ may be excluded from the fair market value for computing the unitrust amount."

SECTION 49. G.S. 37A-1-104.4 (b) reads as rewritten:

"(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the ~~grantor~~ settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust."

SECTION 49.1. G.S. 37A-1-104.7 is repealed.

SECTION 50. G.S. 37A-1-104.9 reads as rewritten:

"**§ 37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the ~~grantor's~~ settlor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part, or expressly states the ~~grantor's~~ settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust." or "the trustee shall not determine the distributions to the income beneficiary as a unitrust amount." or similar words reflecting that intent is sufficient to preclude the use of this Part."

SECTION 51. G.S. 53-163.2 reads as rewritten:

"**§ 53-163.2. Investments in securities by banks or trust companies.**

Unless the governing instrument, court order, or a statute specifically directs otherwise, a bank or trust company serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate ~~thereof, as defined in G.S. 36A-60(1),~~ thereof participates or has participated as a member of a syndicate underwriting such security, if:

(1) The fiduciary does not purchase the security from itself or its affiliate; and

(2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments."

SECTION 52. G.S. 35A-1251(24) reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(24) To petition the court for ~~prior~~ approval ~~of transfers of assets of the ward~~ of the exercise of any of the following powers with respect to a revocable trust ~~executed by the ward~~ that the ward, if competent, ~~prior to the ward being declared incompetent, provided that the ward executed a paper writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn.~~ could exercise as settlor of the revocable trust:

a. Revocation of the trust.

b. Amendment of the trust.

c. Additions to the trust.

d. Direction to dispose of property of the trust.

e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate plan; and (ii) shall be

subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts."

SECTION 53. This act becomes effective October 1, 2007, and applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2007, shall apply.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 947
PROPOSED COMMITTEE SUBSTITUTE S947-CSRC-8 [v.4]

4/4/2007 3:32:39 PM

Short Title: Uniform Trust Code Changes. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE UNIFORM TRUST CODE AND OTHER RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-13-3(a)(5) reads as rewritten:

"(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent ~~man~~ person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including ~~but not limited to~~ the powers specified in the following subdivisions:

...

(5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative ~~upon compliance with the provisions of G.S. 36A-63.~~ pursuant to G.S. 53-163.1.

...."

SECTION 1.1. G.S. 32A-3 is amended by adding a new subsection to read:

"**§ 32A-3. Provisions not exclusive; reference to Chapter ~~32B.~~32B; limitations on authority.**

(a) The provisions of this Article are not exclusive and shall not bar the use of any other or different form of power of attorney desired by the parties concerned.

(b) A power of attorney under the provisions of this Article may refer to Chapter 32B as the same is set out in Chapter 626 of the 1983 Session Laws.

(c) Notwithstanding any other provision of this Chapter, no attorney-in-fact may exercise powers described in G.S. 36C-6-602A(a) to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate

plan. This subsection shall not impair the authority of an attorney-in-fact to make gifts of the principal's property, as provided in Articles 2A and 2B of this Chapter."

SECTION 1.2. G.S. 32A-14 is amended by adding a new subsection to read:

"**§ 32A-14. Powers of attorney executed under the provisions of G.S. 47-115.1; reference to Chapter ~~32B.~~32B; limitations on authority.**

(a) A power of attorney executed prior to October 1, 1988, pursuant to G.S. 47-115.1 as it existed prior to October 1, 1983, shall be deemed to be a durable power of attorney as defined in G.S. 32A-8.

(b) A power of attorney under the provisions of this Article may refer to Chapter 32B as the same is set out in Chapter 626 of the 1983 Session Laws

(c) Notwithstanding any other provision of this Chapter, no attorney-in-fact may exercise powers described in G.S. 36C-6-602A(a) to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan. This subsection shall not impair the authority of an attorney-in-fact to make gifts of the principal's property, as provided in Articles 2A and 2B of this Chapter."

SECTION 1.3. G.S. 36B-8 reads as rewritten:

"**§ 36B-8. Conflict with other law.**

To the extent that the provisions of this Chapter are inconsistent with the provisions of either Chapter ~~36A~~ 36C or Chapter 55A, the provisions of this Chapter shall control. The provisions of this Chapter shall not apply to the University of North Carolina."

SECTION 2. G.S. 36C-1-103 reads as rewritten:

"**§ 36C-1-103. Definitions.**

~~In this~~ The following definitions apply in this Chapter:

(1) ~~"Action", with respect~~ Action. – When applicable to an act of a trustee, includes a failure to act.

(2) ~~"Ascertainable standard" means a~~ Ascertainable standard. – A standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) ~~"Beneficiary" means a~~ Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or transfer; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property.

(4) ~~"Charitable trust" means a~~ Charitable trust. – A trust, including a split-interest trust as described in section 4947 of the Internal Revenue Code, created for a charitable purpose described in G.S. 36C-4-405(a).

(5) ~~"Environmental law" means a~~ Environmental law. – A federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) ~~"General guardian" means a general guardian as that term is~~ General guardian. – As defined in G.S. 35A-1202(7).

(7) ~~"Guardian of the estate" means a guardian of the estate as that term is~~ Guardian of the estate. – As defined in G.S. 35A-1202(9).

(8) ~~"Guardian of the person" means a guardian of the person as that term is~~ Guardian of the person. – As defined in G.S. 35A-1202(10).

(9) ~~"Interests of the beneficiaries" means the~~ Interests of the beneficiaries. – The beneficial interests provided in the terms of the trust.

(10) ~~"Internal Revenue Code" means the~~ Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.

(11) ~~"Jurisdiction", with respect~~ Jurisdiction. – When applicable to a geographic area, includes a state or country.

(12) ~~"Person" means an~~ Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(13) ~~"Power of withdrawal" means a~~ Power of withdrawal. – A presently exercisable general power of appointment other than a power:

a. Exercisable by a trustee and limited by an ascertainable standard; or

b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13a) Principal place of administration. – The trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee has no usual place of business. In the case of cotrustees, the principal place of administration is one of the following:

a. The usual place of business of the corporate trustee if there is a corporate cotrustee.

b. The usual place of business or residence of any of the cotrustees if there is no corporate cotrustee.

(14) ~~"Property" means anything~~ Property. – Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(15) ~~"Qualified beneficiary" means a~~ Qualified beneficiary. – A living beneficiary ~~who,~~ to whom, on the date the beneficiary's qualification is ~~determined:~~ determined, any of the following apply:

a. Is a distributee or permissible distributee of trust income or ~~principal;~~ principal.

b. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in sub-subdivision a. of this subdivision terminated on that date without causing the trust to ~~terminate; or~~ terminate.

c. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(16) ~~"Revocable", as applied~~ Revocable. – When applicable to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(17) ~~"Settlor" means a~~ Settlor. – A person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(18) ~~"Spendthrift provision" means a~~ Spendthrift provision. – A term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(19) ~~"State" means a~~ State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(20) ~~"Terms of a trust" means the~~ Terms of a trust. – The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established in a judicial proceeding.

(21) ~~"Trust instrument" means an~~ Trust instrument. – An instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument, and any modifications permitted by court order.

(22) ~~"Trustee" includes~~ Trustee. – Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trusts."

SECTION 3. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through G.S. 36C-4-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under G.S. 36C-10-1008;

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or beneficiary;
(8) Periods of limitation for commencing a judicial proceeding;
(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice; ~~and~~
(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204.~~ G.S. 36C-2-204; and
(11) The requirement that the exercise of the powers described in G.S. 36C-6-602A(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan."

SECTION 4. G.S. 36C-1-107 reads as rewritten:

"(a) The meaning and effect of the terms of a trust are determined ~~by:~~ by any of the following:

(1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at ~~issue; or~~ issue.
(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) Notwithstanding subsection (a) of this section, the rights of a person other than a trustee or beneficiary are governed by G.S. 36C-10-1010 through G.S. 36C-10-1013."

SECTION 5. G.S. 36C-1-109(a) reads as rewritten:

"(a) Subject to subsection (d) of this section, notice ~~Notice~~ to a person under this Chapter or the sending of a document to a person under this Chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

(1) Permissible methods of notice or methods for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.
(2) Notice shall be deemed to be given upon the occurrence of any of the following:
(a) When personally delivered by hand to the person.
(b) When transmitted by facsimile.
(c) When placed in the hands of a nationally recognized courier service for delivery.
(d) When received by the person if sent by registered or certified United States mail, return receipt requested.

(e) Three days after depositing the notice in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail.

(3) Notice by any means other than those described in subdivision (2) of this subsection shall be deemed to be given for all purposes upon the date of actual receipt."

SECTION 6. G.S. 36C-2-203(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a ~~trustee;~~ trustee, including the appointment and removal of a trustee pursuant to G.S. 36C-4-414(b).

(2) ~~To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk of superior court, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee is required to initiate a proceeding to resign or renounce as trustee;~~ To approve the resignation of a trustee.

(3) To review trustees' fees under Article 6 of Chapter 32 of the General Statutes and review and settle interim or final ~~accounts;~~ accounts.

(4) To (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust as provided in ~~G.S. 37A-1-104.3;~~ G.S. 37A-1-104.3.

(5) To transfer a trust's principal place of ~~administration;~~ administration.

(6) To require a trustee to provide bond and determine the amount of the bond, excuse a requirement of bond, reduce the amount of bond, release the surety, or permit the substitution of another bond with the same or different ~~sureties;~~ sureties.

(7) To make orders with respect to a trust for the care of animals as provided in ~~G.S. 36C-4-408;~~ G.S. 36C-4-408.

(8) To make orders with respect to a noncharitable trust without an ascertainable beneficiary as provided in ~~G.S. 36C-4-409; and~~ G.S. 36C-4-409.

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. ~~Upon~~

~~motion of a party, the clerk of superior court may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court division of the General Court of Justice.~~ Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article."

SECTION 7. G.S. 36C-2-203(c) reads as rewritten:

"(c) Nothing in this section affects the right of a person to file an action in the superior court division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. ~~In the event either the petitioner or respondent in a trust proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the superior court division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In absence of removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding to the extent consistent with this Article.~~"

SECTION 8. G.S. 36C-2-204 reads as rewritten:

"**§ 36C-2-204. Venue.**

In any trust ~~proceeding or action,~~ proceeding, whether brought before the clerk of superior court or the superior court division of the General Court of Justice, the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:

(1) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts is the place where the accountings are filed.

(2) If the trustee is not required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36C-2-203 involving trusts ~~is:~~ is either of the following:

a. In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary ~~resides; or~~ resides.

b. In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered.

~~(3) Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the~~

~~case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:~~

~~a. The usual place of business of the corporate trustee if there is but one corporate or cotrustee; or~~

~~b. The usual place of business or residence of any of the cotrustees.~~

(4) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in any county of this State in which a beneficiary resides, in any county in which trust property is located, in the county of this State specified in the trust instrument, if any county is so specified, or ~~if the trust is created by will,~~ in the case of a testamentary trust, in the county in which the decedent's estate was or is being administered."

SECTION 9. G.S. 36C-2-205 is amended by adding a new subsection to read:

"(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred."

SECTION 9.1. G.S. 36C-2-205 is amended by adding a new subsection to read:

"(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard."

SECTION 10. G.S. 36C-2-205(h) reads as rewritten:

"(h) Orders Upon ~~Consolidation/Joinder.~~ Consolidation/Joinder/Transfer. – Upon the consolidation of a trust proceeding and ~~civil action or~~ a civil action, joinder of claims under subsection (f) or (g) of this ~~section~~ section, or transfer to the superior court division of the General Court of Justice pursuant to subsection (g1) of this section, the clerk of superior court or the judge may make ~~such~~ appropriate orders ~~as appropriate~~ to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the ~~consolidation or joinder~~ consolidation, joinder of claims under subsection (f) or (g) of this section, or transfer to the superior court division of the General Court of Justice under subsection (g1) of this section, the clerk of superior court's exclusive jurisdiction as set forth in ~~G.S. 36C-2-203(a)~~ G.S. 36C-2-203(a)(1) through (8) shall not be stayed unless so ordered by the court."

SECTION 11. G.S. 36C-3-303 reads as rewritten:

"**§ 36C-3-303. Representation by fiduciaries, parents, and other persons.**

To the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or ~~dispute:~~ dispute involving a trust:

(1) A general guardian or a guardian of the estate may represent and bind the estate that the guardian controls.

(2) ~~A guardian of the person may represent and bind the ward if a general guardian or guardian of the estate of the ward's estate has not been appointed.~~

(3) An agent under a power of attorney having authority to act with respect to the particular question or dispute may represent and bind the principal.

(4) A trustee may represent and bind the beneficiaries of the ~~trust.~~ trust unless the question or dispute involves the internal affairs of the trust.

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(6) A parent may represent and bind the parent's minor child if a general ~~guardian,~~ guardian or guardian of the ~~estate, or guardian of the person~~ estate for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child, the parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child or, if no parent is a beneficiary of the trust that is the subject of the representation, a parent who is a lineal descendant of the settlor is entitled to represent the minor child, or if no parent is a lineal descendant of the settlor, a guardian ad litem shall be appointed to represent the minor child.

(7) A person may represent and bind that person's unborn issue."

SECTION 12. G.S. 36C-3-304 reads as rewritten:

"**§ 36C-3-304. Representation by person having substantially identical interest.**

Unless otherwise represented under this Article, a minor, an ~~incapacitated~~ incompetent or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person ~~represented.~~ represented with respect to the particular question or dispute."

SECTION 13. G.S. 36C-3-305(a) reads as rewritten:

"(a) If the court determines that an interest is not represented under this Article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, ~~incapacitated~~ an incompetent or unborn individual, or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests."

SECTION 14. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created ~~by:~~ by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's ~~death;~~ death including either of the following:

a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by ~~law; or~~ law.

(3) Exercise of a power of appointment in favor of a trustee."

SECTION 15. G.S. 36C-4-409 reads as rewritten:

"**§ 36C-4-409. Noncharitable trust without ascertainable beneficiary.**

Except as otherwise provided in G.S. 36C-4-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years. If the trust is still in existence after 21 years, the trust shall terminate. The unexpended trust property shall be transferred in the following order:

a. As directed in the trust instrument.

b. If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.

c. If no taker is produced by the application of sub-subdivisions a. or b. of this subdivision, to the settlor, if then living, otherwise to the settlor's heirs as determined under Chapter 29 of the General Statutes as of the date of the settlor's death.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent that the court determines that the value of the trust property exceeds the amount required for the intended use. ~~Except as otherwise provided in the terms of the trust,~~ The property not required for the intended use ~~must be distributed to the settlor, if then living, or otherwise to the settlor's successors in interest.~~ shall be distributed under subdivision (1) of this section.

(4) Notwithstanding subdivisions (1) through (3) of this section, a trust, contract, or other arrangement to provide for the care of a cemetery lot, grave, crypt, niche, mausoleum, columbarium, grave marker, or monument is valid without regard to remoteness of vesting, duration of the arrangement, or lack of definite beneficiaries to enforce the trust,

provided that the trust, contract, or other arrangement meets the requirements of G.S. 28A-19-10, Article 4 of Chapter 65 of the General Statutes, Article 9 of Chapter 65 of the General Statutes, or other applicable law. This section does not repeal or supersede G.S. 36C-4-413."

SECTION 16. G.S. 36C-4-410 reads as rewritten:

"**§ 36C-4-410. Modification or termination of trust; proceedings for approval or disapproval.**

(a) In addition to the methods of termination prescribed by G.S. 36C-4-411 through G.S. 36C-4-414, a trust terminates to the extent that the trust is revoked or expires under its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411 through ~~G.S. 36C-4-416, or trust combination or division under G.S. 36C-4-417.~~ G.S. 36C-4-416. A settlor may commence a proceeding to approve or disapprove a proposed modification or termination under G.S. 36C-4-411. The settlor of a charitable trust may maintain a proceeding to modify the trust under G.S. 36C-4-413. A trustee is a necessary party to any proceeding under this ~~section.~~ Article.

(c) Repealed by Session Laws 2006-259, s. 13(c), effective October 1, 2006."

SECTION 17. G.S. 36C-4-411 reads as rewritten:

"**§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.**

(a) ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries,~~ If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they may compel the modification or termination of the trust without the approval of the court even if the modification or termination is inconsistent with a material purpose of the trust. If any beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any competent adult beneficiary or the representative of any beneficiary properly represented under Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad litem. The court shall allow the modification or termination if the court finds that, following the appointment of a guardian ad litem, all beneficiaries or their representatives have consented. A settlor's power to consent to a trust's modification or termination may be exercised ~~by~~ by:

(1) ~~an~~ An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the ~~trust; by the~~ trust.

(2) The settlor's general guardian or the guardian of the estate with the approval of the court supervising the ~~guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the court supervising the guardianship if an agent is not so~~

~~authorized and a general guardian or guardian of the estate has not been appointed.~~ guardianship.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries, if the court concludes that modification is consistent with a material purpose of the trust.

(c) Where the beneficiaries of a noncharitable irrevocable trust seek to compel a termination of the trust and the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust may be modified or terminated, in the discretion of the court, only if the court determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c) of this section, the modification or termination may be approved by the court if the court is satisfied ~~that:~~ that all of the following apply:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this ~~section; and~~ section.

(2) The interests of a beneficiary who does not consent will be adequately protected.

(e) Repealed by Session Laws 2006-259, s. 13(d), effective October 1, 2006.

(f) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust under this section, the presumption of fertility is rebuttable.

(g) If a trust instrument provides for the disposition of property to a class of persons described only as "heirs" or "next of kin" of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances."

SECTION 17.1. G.S. 36C-4-413(c) is repealed.

SECTION 18. G.S. 36C-4-418 reads as rewritten:

"**§ 36C-4-418. Distribution upon termination of trust.**

Upon termination of a trust under ~~G.S. 36C-4-411,~~ G.S. 36C-4-411(a), the trustee shall distribute the trust property as agreed by the beneficiaries. Upon termination of a trust under ~~G.S. 36C-4-412 or G.S. 36C-4-414,~~ G.S. 36C-4-411(b) or (c), the trustee shall distribute the trust property in accordance with the order entered by the court. Upon termination of a trust under G.S. 36C-4-412(a) or G.S. 36C-4-414, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. ~~If any trust property becomes distributable to a minor or incompetent under this Article, it may be distributed:~~

~~(1) To the guardian of the estate or general guardian of the beneficiary;~~

~~(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or~~

~~(3) In accordance with the North Carolina Uniform Custodial Trust Act, Chapter 33B of the General Statutes.~~"

SECTION 19. G.S. 36C-5-501(b) reads as rewritten:

"(b) ~~This~~ Subsection (a) of this section shall not ~~apply~~ apply, and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the extent that a beneficiary's ~~interest:~~ interest is protected or restricted by any of the following:

(1) ~~Is subject to a~~ A spendthrift ~~provision;~~ provision.

(2) ~~Is a~~ A discretionary trust interest as defined in ~~G.S. 36C-5-504(a)(2); or~~ G.S. 36C-5-504(a)(2).

(3) ~~Is a~~ A protective trust interest as described in G.S. 36C-5-508."

SECTION 20. G.S. 36C-5-505 reads as rewritten:

"**§ 36C-5-505. Creditor's claim against settlor.**

(a) ~~Whether~~ Subject to the other applicable law, whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by ~~G.S. 28A-19-3.~~ applicable law.

(b) For purposes of this section, with respect to a power of withdrawal over property of a trust exercisable by a holder of the power other than the settlor of the trust, both of the following shall apply:

(1) The property subject to the exercise of the power shall be subject to the claims of the creditors of the holder only when and to the extent that the holder exercises the power.

(2) The lapse, release, or waiver of a power ~~of withdrawal~~ shall not be deemed to be an exercise of the power and shall not cause the holder to be treated as a settlor of the trust."

SECTION 21. G.S. 36C-6-602(e) is repealed.

SECTION 22. G.S. 36C-6-602(f) is repealed.

SECTION 23. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-602A. Exercise of settlor's powers with respect to revocable trust by agent or guardian.**

(a) An agent acting under a power of attorney may exercise any of the following powers of the settlor with respect to a revocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

(1) Revocation of the trust.

(2) Amendment of the trust.

(3) Additions to the trust.

(4) Direction to dispose of property of the trust.

(5) The creation of the trust, notwithstanding G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subsection shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(b) A general guardian or a guardian of the estate of the settlor may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24)."

SECTION 24. G.S. 36C-6-603 reads as rewritten:

"**§ 36C-6-603. Settlor's ~~powers; powers of withdrawal.~~ control of revocable trust.**

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. If a trustee is a settlor, the trustee's actions are presumed to be taken at the direction of the settlor.

(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors."

SECTION 25. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-605. Failure of disposition of property of a trust by lapse or otherwise.**

(a) If a beneficiary under a revocable trust predeceases the execution of the trust or the settlor or is treated as having predeceased the settlor, and if the beneficiary is a grandparent of or a descendant of a grandparent of the settlor, then the issue of the predeceased beneficiary who survive the settlor shall take in place of the deceased

beneficiary. The deceased beneficiary's issue shall take the deceased beneficiary's share in the same manner that the issue would take as heirs of the deceased beneficiary under the intestacy provisions in effect at the time of the settlor's death. The provisions of this section apply whether the disposition of property is to an individual, to a class, or is a part of the residue of the trust. In the case of the disposition to a class, the issue shall take whatever share the deceased beneficiary would have taken had the deceased beneficiary survived the settlor. In the event the deceased class member leaves no issue, the deceased beneficiary's share shall devolve upon the members of the class who survived the settlor and the issue of any deceased members taking by substitution.

(b) If the provisions of subsection (a) of this section do not apply to the disposition of property that fails, the property shall pass to the beneficiaries in proportion to their share of the residue of the trust. If the disposition is part of the residue of the trust, it shall augment the shares of the other residuary beneficiaries, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary beneficiaries, then the property shall pass by intestacy."

SECTION 26. Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36-6-606. Revocation of provisions in revocable trust by divorce or annulment; revival.**

Dissolution of the settlor's marriage by absolute divorce or annulment after executing a revocable trust revokes all provisions in the trust in favor of the settlor's former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse and any appointment of the former spouse as trustee. Property prevented from passing to the former spouse because of revocation by divorce or absolute annulment passes as if the former spouse failed to survive the settlor, and other provisions conferring some power or office on the former spouse are interpreted as if the former spouse failed to survive the settlor. If provisions are revoked solely by this section, they are revived by the settlor's remarriage to the former spouse. The reference to "former spouse" in this section includes a purported former spouse."

SECTION 26.1 Article 6 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-6-607. Modification or termination of a revocable trust.**

(a) A revocable trust may be modified or terminated by the court pursuant to any of the methods for modification or termination of an irrevocable trust set forth in G.S. 36C-4-411(b) or (c), G.S. 36C-4-412, G.S. 36C-4-415, or G.S. 36C-4-416.

(b) The settlor is a necessary party to any proceeding brought to modify or terminate a revocable trust."

SECTION 27. G.S. 36C-7-703(f) is repealed.

SECTION 28. G.S. 36C-7-703(g) reads as rewritten:

"(g) ~~Each~~ A trustee shall exercise reasonable ~~care~~ care in connection with matters for which the trustee is given authority under the terms of a trust to:

(1) Avoid enabling a cotrustee to commit a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust."

SECTION 29. G.S. 36C-7-703(h) reads as rewritten:

"(h) Notwithstanding subsection ~~(f) or~~ (g) of this ~~section, a trustee who has not joined in an action approved by a majority of the other trustees is not liable for the action. Notwithstanding subsection (f) or (g) of this section, a dissenting trustee who joins in an action at the direction of the majority of the trustees but who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action, unless that trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action.~~ section, a cotrustee is not liable for the action of a majority of the other trustees if either of the following apply:

(1) The trustee does not join in an action approved by a majority of the other trustees.

(2) The dissenting trustee joins in an action necessary to carry out the decision of the majority of the trustees and notifies in writing the cotrustees of the dissent at or before joining in the action, unless the trustee had knowledge that the action taken involved intentional misconduct or was taken with an intention to directly or indirectly provide an improper personal benefit to one or more trustees approving the action."

SECTION 30. G.S. 36C-7-704(d) reads as rewritten:

"(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee;

(2) By a person selected by majority agreement of the qualified beneficiaries, if the trust is a split-interest charitable trust;

(2a) By a person selected by majority agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or

(3) By a person appointed by the court."

SECTION 31. G.S. 36C-8-802(d) reads as rewritten:

"(d) A transaction between a trustee and a beneficiary that does not concern trust property, but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary, and from which the trustee obtains an ~~advantage,~~ advantage and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers similarly situated customers, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary."

SECTION 32. G.S. 36C-8-802(f) reads as rewritten:

"(f) Notwithstanding subsection (c) of this section:

(1) An investment by a trustee in securities of an investment company, investment trust, or pooled investment vehicle in which the trustee or its affiliate has an investment, or to which the trustee, or its affiliate, provides services for compensation, is not presumed to be affected by

a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Article 9 of this Chapter. The investment company, investment trust, or pooled investment vehicle may compensate the trustee for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under G.S. 36C-8-813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined; and

(2) Payment made by a trustee to an attorney, broker, accountant, or agent for services performed on behalf of the trust in the ordinary course of business is not considered to be affected by a conflict between the trustee's personal and fiduciary interests if the payment is consistent with payments generally made ~~in the community~~ for the same or similar services."

SECTION 33. G.S. 36C-8-802(h) reads as rewritten:

"(h) This section does not preclude any of the following ~~transactions, if fair to the beneficiaries:~~ transactions:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the ~~trustee;~~ trustee.

(2) Payment of ~~reasonable~~ compensation to which the ~~trustee;~~ trustee is entitled under G.S. 36C-7-708.

(3) A transaction that is fair to the beneficiaries between a trust and another trust, decedent's estate, or guardianship, or similar relationship of which the trustee is a fiduciary or in which a beneficiary has an ~~interest;~~ interest.

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate of the ~~trustee; or~~ trustee.

(5) An advance by the trustee of money for the protection of the trust."

SECTION 34. G.S. 36C-8-808(a) reads as rewritten:

"(a) While a trust is revocable, the trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust."

SECTION 34.1. G.S. 36C-8-810(d) reads as rewritten:

"(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest and administer as a whole the property of two or more separate trusts."

SECTION 35. G.S. 36C-8-813 reads as rewritten:

"**§ 36C-8-813. Duty to inform and report.**

(a) The trustee is under a ~~duty to a qualified beneficiary to give that beneficiary upon request and at reasonable times complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary, or the beneficiary's representative, to inspect the subject matter of the trust and the accounts and other documents relating to the trust.~~ duty to do all of the following:

(1) Provide reasonably complete and accurate information as to the nature and amount of the trust property, at reasonable intervals, to any qualified beneficiary who is a distributee or permissible distributee of trust income or principal.

(2) In response to a reasonable request of any qualified beneficiary:

a. Provide a copy of the trust instrument.

b. Provide reasonably complete and accurate information as to the nature and amount of the trust property.

c. Allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.

(b) Notwithstanding subsection (a) of this section:

(1) The duty of the trustee under subsection (a) of this section shall not include informing any beneficiary in advance of transactions relating to the trust property.

(2) A trustee is considered to have discharged the trustee's duty under subdivision (1) of subsection (a) of this section as to a qualified beneficiary for matters disclosed by a report sent at least annually and at termination of the trust to the beneficiary that describes the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, and lists the trust assets and their respective market values, including estimated values of assets with uncertain values. No presumption shall arise that a trustee who does not comply with this subdivision failed to discharge the trustee's duty under subdivision (1) of subsection (a) of this section.

(c) A qualified beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. With respect to future reports and other information, a beneficiary may withdraw a waiver previously given.

~~(d) Subsection (b) of this section applies only to a trust created under a trust instrument executed on or after the effective date of this Chapter.~~"

SECTION 36. G.S. 36C-8-814(b) reads as rewritten:

"(b) Subject to subsection (d) of this section, and unless the terms of the trust ~~expressly~~ indicate by an express reference to this subsection that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power that would, except for this subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.

(2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal ~~benefit,~~ benefit that would, except for this subsection, constitute in whole or in part a general power of

appointment, the trustee may exercise the power in accordance with an ascertainable standard.

(3) The trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(4) Any power conferred upon the trustee in the trustee's capacity as a trustee to allocate receipts and expenses as between income and principal in the trustee's own favor must be exercised in accordance with the provisions of Chapter 37A of the General Statutes, the Uniform Principal and Income Act of 2003.

For purposes of this subsection, a "general power of appointment" means any power that would cause the income to be taxed to the trustee in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or section 2514(c) of the Internal Revenue Code."

SECTION 37. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made by others to ~~a~~ any beneficiary;

(19a) Guarantee loans made by others to ~~a~~ any beneficiary;

(19b) Pledge trust property to guarantee loans made by others to ~~a~~ any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made by others to a proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

...

(21) Pay an amount distributable to a beneficiary ~~who is under a legal disability~~ regardless of whether the beneficiary is a minor or incompetent or ~~who~~ whether the trustee reasonably believes ~~is incapacitated,~~ the beneficiary to be incompetent, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or if the beneficiary is a minor or incompetent or a person the trustee reasonably believes to be incompetent, by:

a. Paying it to the beneficiary's general guardian or the guardian of the beneficiary's ~~estate or, if the beneficiary does not have a general guardian or guardian of the beneficiary's estate, the guardian of the beneficiary's person;~~ estate;

b. Paying it to a custodian under a uniform transfer to minors act or custodial trustee under a uniform custodial trust act and, for that purpose, creating a custodianship or custodial trust for the benefit of the beneficiary;

c. Paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

d. Managing it as a separate fund on the beneficiary's behalf.

A trustee making payments under this subdivision does not have any duty to see to the application of the payments so made, if the trustee exercised due care in the selection of the person, including ~~the~~ a minor or incompetent, to whom the payments were made, and the receipt of that person shall be full acquittance to the ~~trustee;~~ trustee. Notwithstanding the foregoing, if a mandatory distribution is to be paid to a beneficiary who is not a minor or incompetent or a person the trustee reasonably believes to be incompetent, the distribution may be applied for the beneficiary's benefit only with the beneficiary's consent;

...."

SECTION 37.1. Article 9 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-9-903A. Duties as to life insurance.**

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply."

SECTION 38. G.S. 32-53 reads as rewritten:

"**§ 32-53. Definitions.**

The following definitions apply in this Article:

~~(1)~~ ~~"Beneficiary" means (i) all living persons who are currently receiving or who are eligible to receive distributions of income or principal of the trust and (ii) all living persons who would be entitled to income and/or principal of the trust if the trust were to terminate at the time of the giving of the notice referred to in G.S. 32-55 (without regard to the exercise of any power of appointment).~~

~~(2) "Representative" means, with respect to a beneficiary who is under a legal disability, the beneficiary's agent under a durable power of attorney, general guardian, guardian of the estate, or guardian of the person of a beneficiary, and the parent of a minor beneficiary.~~

~~(3) "Trust" is as defined in G.S. 36A-22.1(5).~~

(1) Legal disability. – A person under a legal disability is a person who is a minor, incompetent, or unborn individual, or whose identity or location is unknown.

(2) Qualified beneficiary. – As defined in G.S. 36C-1-103(15). With respect to a charitable trust defined in G.S. 36C-1-103(4), the term includes (i) a charitable organization described in G.S. 36C-1-110 as having the rights of a qualified beneficiary; or (ii) if there is no such charitable organization, the Attorney General.

(3) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

(4) Trust. – A trust to which Chapter 36C of the General Statutes applies as provided in G.S. 36C-1-102."

SECTION 39. G.S. 32-55 reads as rewritten:

"**§ 32-55. Notice.**

(a) ~~The trustee shall~~ If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be ~~deemed to be given to the beneficiary only if notice is~~ given to the representative of the beneficiary. ~~If the trustee is the representative of the beneficiary, no notice shall be deemed to have been given to the beneficiary.~~ If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary

so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(d) ~~The written notice required under this section shall be deemed to be given as follows: (i) when personally delivered by hand to the person, (ii) when transmitted by facsimile or e-mail with confirmation of transmission, (iii) when placed in the hands of a nationally recognized courier service for delivery, (iv) when received by the person if sent by registered or certified United States mail, return receipt requested, (v) three days after depositing the same in a regularly maintained receptacle for the deposit of United States mail if sent by regular United States mail. Notices delivered by any other means shall be deemed to be delivered, given, and received for all purposes as of the date of the actual receipt.~~ The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 40. G.S. 32-56 reads as rewritten:

"**§ 32-56. Payment of compensation without court order.**

The trustee is authorized to pay the compensation provided for in G.S. 32-54 without prior approval of the clerk of superior court only if:

(1) The annual amount of compensation does not exceed four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year; or

(2) ~~No beneficiary~~ Notice has been given pursuant to G.S. 32-55 and no qualified beneficiary or representative of a qualified beneficiary has initiated a proceeding under G.S. 32-57 for review of the reasonableness of the compensation within 20 days after notice has been given by the trustee in accordance with G.S. 32-55."

SECTION 41. G.S. 32-57(a) reads as rewritten:

"(a) ~~The trustee or any beneficiary~~ If the terms of the trust do not specify the trustee's compensation, the trustee or any qualified beneficiary, or representative of a qualified beneficiary, may initiate a proceeding under Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 42. G.S. 32-58 reads as rewritten:

"**§ 32-58. Reimbursement for expenses incurred.**

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred or advanced in the administration of the trust and shall be empowered to pay the expenses from the assets of the trust without prior approval of the clerk of superior court. The court may allow reimbursement of other expenses incurred or advanced to which the trustee is entitled in equity and good conscience. The trustee shall have a lien on trust property to secure reimbursement, with reasonable interest, of expenses owed under this section."

SECTION 43. G.S. 32-71(c) and (d) are repealed.

SECTION 44. G.S. 37A-1-104(c)(8) reads as rewritten:

"(c) A trustee shall not make an adjustment:

...

(8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or ~~indirectly; or~~ indirectly, except that a trustee may make an adjustment that also benefits a beneficiary even if the terms of the trust provide for trustee compensation as a percentage of the trust's income; or

...."

SECTION 45. G.S. 37A-1-104.1 reads as rewritten:

"**§ 37A-1-104.1. Definitions.**

~~For purposes of this~~ The following definitions apply to this Part:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

~~(2) "Competent beneficiary" includes:~~

~~a. A beneficiary who has attained the age of 18 and is not otherwise under a legal disability;~~

~~b. A court-appointed guardian of an incompetent beneficiary;~~

~~c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;~~

~~d. A court-appointed guardian of a minor beneficiary's estate; and~~

~~e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.~~

(3) ~~"Disinterested person" means a~~ Disinterested person. – A person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the ~~grantor~~ settlor of the trust and any interested trustee.

~~(4) "Grantor" means an individual who created an inter vivos trust.~~

(5) ~~"Income trust" means a~~ Income trust. – A trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

(6) ~~"Interested distributee" means a~~ Interested distributee. – A living beneficiary who is a distributee or permissible distributee ~~person to whom distributions~~ of trust income or principal ~~can currently be made~~ who has the power to remove the existing trustee and designate as

successor a person who may be a related or subordinate party with respect to that distributee.

(7) ~~"Interested trustee" means~~ Interested trustee. – Any of the following:

~~(i)~~a. ~~an~~ An individual trustee ~~to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed,~~ who is a qualified beneficiary.

~~(ii)~~b. ~~any~~ Any trustee who may be removed and replaced by an interested ~~distributee, or~~ distributee.

~~(iii)~~c. ~~an~~ An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(7a) Legal disability. – A person under a legal disability is a person who is a minor, an incompetent, or an unborn individual, or whose identity or location is unknown.

(7b) Qualified beneficiary. – A qualified beneficiary as defined in G.S. 36C-1-103(15).

(8) ~~"Related or subordinate party" means a~~ Related or subordinate party. – A related or subordinate party as defined in section 672(c) of the Code.

(8a) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.

(8b) Settlor. – An individual, including a testator, who creates a trust.

(9) ~~"Total return unitrust" means an~~ Total return unitrust. – An income trust that has been converted under and meets the provisions of this Part.

(9a) ~~"Treasury regulations" means the~~ Treasury regulations. – The regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

(10) ~~"Trustee" means any~~ Trustee. – Any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

(11) ~~"Unitrust amount" means an~~ Unitrust amount. – An amount computed as a percentage of the fair market value of the trust."

SECTION 46. G.S. 37A-1-104.2 reads as rewritten:

"**§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or

the method used to determine the fair market value of the trust ~~if:~~ if all of the following apply:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~policy.

(2) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with~~ including copies of the written policy and this Part, to (i) the ~~grantor~~ settlor of the trust, if living, and ~~(ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ (ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(3) There is at least (i) one ~~competent~~ qualified beneficiary described in ~~subdivision (2)(ii) of this subsection or subdivision (2)(iii) of this subsection~~ G.S. 36C-1-103(15)a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described and (ii) one ~~competent~~ qualified beneficiary described in ~~subdivision (2)(iv) of this subsection;~~ G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(4) No person receiving notice of the trustee's intention to take the proposed action objects to the action within 60 days ~~of receipt of the notice~~ after notice has been given. The objection shall be by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval,

(i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust ~~if:~~ if all of the following apply:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the ~~policy;~~ policy.

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust ~~amount;~~ amount.

(3) The trustee ~~sends~~ gives written notice of its intention to take the action, ~~along with~~ including copies of the written policy and this Part, and the determinations of the disinterested person to (i) the ~~grantor~~ settlor of the trust, if living, and (ii) all persons who are the ~~competent~~ qualified beneficiaries ~~who are currently receiving or eligible to receive distributions of income of the trust, (iii) without regard to the exercise of a general power of appointment, all competent beneficiaries who would receive or be eligible to receive the distributions of income of the trust if the interests of the beneficiaries currently receiving or eligible to receive the income terminated at the time of the giving of the notice but the termination of those interests would not cause the trust to terminate, (iv) without regard to the exercise of any power of appointment, all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice, and (v) all persons acting as advisor or protector of the trust;~~ of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(4) There is at least one (i) ~~competent~~ qualified beneficiary described in ~~subdivision (3)(ii) of this subsection or subdivision (3)(iii) of this subsection~~ G.S. 36C-1-103(15)a. or b. or a representative of a beneficiary so described and (ii) one ~~competent~~ qualified beneficiary described in ~~subdivision (3)(iv) of this subsection;~~

G.S. 36C-1-103(15)c. or a representative of a qualified beneficiary so described. ~~and~~

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days ~~of receipt of~~ after ~~the~~ notice has been given. The objection must be by written instrument delivered to the trustee.

(c) A trustee may act under subsection (a) or (b) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided ~~that:~~ that all of the following apply:

(1) Instead of sending written notice to the persons described in subdivisions (2) and (3) of subsection (a) of this section or subdivisions ~~(2)~~ (3) and ~~(3)~~ (4) of subsection (b) of this section, as the case may be, the trustee shall send written notice to ~~the named charity or charities~~ each charitable organization expressly designated ~~then entitled~~ to receive the income of the trust under the governing instrument and, if no ~~named charity or charities are~~ charitable organization is expressly designated ~~entitled~~ to receive all of the income of the trust under the governing instrument, to the Attorney General of this ~~State;~~ State.

(2) Subdivision (4) of subsection (a) of this section or subdivision ~~(4)~~ (5) of subsection (b) of this section, as the case may be, shall not apply to this ~~action; and~~ action.

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by section 4942 of the Code.

(d) The provisions of G.S. 36C-1-109 regarding notices and the sending of documents to persons under Chapter 36C of the General Statutes shall apply for purposes of notices and the sending of documents under this section."

SECTION 47. G.S. 37A-1-104.3 reads as rewritten:

"**§ 37A-1-104.3. Conversion with court approval.**

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under ~~G.S. 36A-1-104.2,~~ G.S. 37A-1-104.2, the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A ~~competent~~ qualified beneficiary or a representative of a qualified beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the ~~competent~~ qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

(c) All proceedings under this section shall be conducted as provided in ~~Article 3 of Chapter 36A of the General Statutes.~~ A rticle 2 of Chapter 36C of the General Statutes."

SECTION 48. G.S. 37A-1-104.4 (a) reads as rewritten:

"(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary ~~also~~ may be excluded from the fair market value for computing the unitrust amount."

SECTION 49. G.S. 37A-1-104.4 (b) reads as rewritten:

"(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the ~~grantor~~ settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust."

SECTION 49.1. G.S. 37A-1-104.7 is repealed.

SECTION 50. G.S. 37A-1-104.9 reads as rewritten:

"**§ 37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the ~~grantor's~~ settlor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part, or expressly states the ~~grantor's~~ settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "the provisions of Part 2 of Article 1 of Chapter 37A of the General Statutes or any corresponding provision of future law, shall not be used in the administration of this trust." or "the trustee shall not determine the distributions to the

income beneficiary as a unitrust amount." or similar words reflecting that intent is sufficient to preclude the use of this Part."

SECTION 51. G.S. 53-163.2 reads as rewritten:

"**§ 53-163.2. Investments in securities by banks or trust companies.**

Unless the governing instrument, court order, or a statute specifically directs otherwise, a bank or trust company serving as trustee, guardian, agent, or in any other fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary or an affiliate ~~thereof, as defined in G.S. 36A-60(1),~~ thereof participates or has participated as a member of a syndicate underwriting such security, if:

(1) The fiduciary does not purchase the security from itself or its affiliate; and

(2) The fiduciary does not purchase the security from another syndicate member or an affiliate, pursuant to an implied or express agreement between the fiduciary or its affiliate and a selling member or its affiliate, to purchase all or part of each other's underwriting commitments."

SECTION 52. G.S. 35A-1251(24) reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(24) To petition the court for ~~prior~~ approval ~~of transfers of assets of the ward~~ of the exercise of any of the following powers with respect to a revocable trust ~~executed by the ward~~ that the ward, if competent, ~~prior to the ward being declared incompetent, provided that the ward executed a paper writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn.~~ could exercise as settlor of the revocable trust:

a. Revocation of the trust.

b. Amendment of the trust.
c. Additions to the trust.
d. Direction to dispose of property of the trust.
e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate plan; and (ii) shall be subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts."

SECTION 53. This act becomes effective October 1, 2007, and applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2007, shall apply.

SENATE BILL 947:
Uniform Trust Code Changes

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 4, 2007
Introduced by:	Sen. Hagan	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S947-CSRC-8[v.4]		

SUMMARY: ***Senate Bill 947 makes conforming, technical, and substantive changes to Chapter 36C, the Uniform Trust Code, and to related statutes. The bill comes as a recommendation of the North Carolina Bar Association. This summary is substantially based upon information provided by the Bar Association.***

The PCS makes mostly technical and grammatical changes to the original bill.

BILL ANALYSIS:

Sections 1 and 1.3 correct statutory citations.

Sections 1.1 and 1.2 amend G.S. 32A-3 and G.S. 32A-14 respectively to provide that an attorney-in-fact may not exercise any powers expressly conferred under a revocable trust to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan

Section 2 amends G.S. 36C-1-103 to add to the list of definitions in Chapter 36C the definition of "principal place of administration" which appears in current G.S. 36C-2-204 relating to venue and to make that definition applicable with respect to other matters under Chapter 36C.

Section 3 amends G.S. 36C-1-105(b) to add a new mandatory rule that provides that the powers granted under 36C-6-602A cannot be exercised by an agent acting under a power of attorney in a manner that alters the designation of beneficiaries to receive property on the settlor's death.

Section 4 amends G.S. 36C-1-107(b) to clarify that North Carolina law governs rights of third parties dealing with a trust, even though the law of another jurisdiction may govern the rights of settlors, trustees, and beneficiaries.

Section 5 amends G.S. 36C-1-109(a) to make the current provisions in G.S. 32-55(d) relating to when notice is given to beneficiaries for purposes of trustee compensation applicable to notice to beneficiaries with respect to other matters under Chapter 36C in order to make uniform in the General Statutes the provisions concerning notices to beneficiaries of a trust.

Section 6 amends G.S. 36C-2-203(a)(1) to clarify that the clerk of court's exclusive jurisdiction to remove a trustee includes a removal of trustee action filed under G.S. 36C-4-414(b). The purpose of this revision is to make clear that a G.S. 36C-4-414(b) proceeding is not brought as a civil action in superior court. It amends G.S. 36C-2-203(a)(2) to clarify that the clerk of court may approve a trustee resignation if a resignation is put before the clerk. The reference to renunciation is deleted as it is not necessary for a trustee to obtain approval from a clerk to renounce. It also amends G.S. 36C-2-203(a)(9) to clarify that matters filed before the clerk of court under subdivision (a)(9) may be transferred out of the clerk's exclusive jurisdiction to superior court by any party. The clerk of court does not have the authority to prevent such a transfer from occurring.

Section 7 amends G.S. 36C-2-203(c) to clarify that notwithstanding the exclusive jurisdiction granted to the clerk of court under subdivision (a)(9), a party always has the ability to file a declaratory judgment action regarding the same matter in superior court if the matter also falls within the purview of the Declaratory Judgment Act.

Section 8 amends G.S. 36C-2-204 to delete the definition of "principal place of administration" which is being added to the list of definitions appearing in G.S. 36C-1-103. In addition, the words "or action" have been stricken to make the language consistent with the statutory definition of "proceeding," which includes an action.

Section 9 amends G.S. 36C-2-205 to add a new subsection (g1) to clarify how a notice to transfer a proceeding brought before the clerk under G.S. 36C-2-203(a)(9) to superior court must be filed and served.

Section 9.1 creates a new subsection (i) to G.S. 36C-2-205 to provide that the Attorney General shall be given notice of every trust proceeding related to a charitable trust and may participate in the action.

Section 10 amends G.S. 36C-2-205(h) to clarify that the subsection applies to transfers of clerk matters to superior court.

Section 11 amends G.S. 36C-3-303 to make clear that (i) representation does not apply to matters outside the trust and (ii) the trustee may not bind a beneficiary in matters concerning a dispute with the trustee. In addition, subsection (2) of G.S. 36C-3-303 is deleted because of the limited powers conferred upon a guardian of the person under Chapter 35A.

Sections 12 and 13 amend G.S. 36C-3-304 and G.S. 36C-3-305 to change the word "incapacitated" to "incompetent" in order to be consistent with other Code references. In addition, the phrase "with respect to the particular question or dispute" is added to clarify that the conflict of interest must be with respect to the particular question or dispute.

Section 14 amends G.S. 36C-4-401 which currently provides that a trust may be created by "other dispositions taking effect upon the settlor's death." It is revised to clarify that dispositions include devises and bequests to trustees as provided in G.S. 31-47 and the designation of the trust as beneficiary of death benefits as provided in G.S. 36C-4-401.1.

Section 15 amends G.S. 36C-4-409 to clarify how assets in a noncharitable trust without an ascertainable beneficiary are distributed upon termination of the trust.

Section 16 amends G.S. 36C-4-410(b) to clarify that there is no requirement that a trust combination or division under G.S. 36C-4-417 must be accomplished by judicial order.

Section 17 amends G.S. 36C-4-411 to (i) clarify the procedure that must be followed to obtain court appointment of a guardian ad litem for a non-judicial modification or termination of a trust where Article 3 representation cannot be had and (ii) make clear that a guardian of a settlor may consent to certain trust modifications without revoking a power of attorney granted by the settlor to another person. In addition, subdivision (3) of G.S. 36C-4-411(a) is deleted because of the limited powers conferred on a guardian of the person under Chapter 35A. It is also amended to add new subsections (f) and (g). These subsections were part of North Carolina's old Modification and Termination of Irrevocable Trust Act (former G.S. 36A-125.5) and were inadvertently left out of the Uniform Trust Code.

Section 17.1 removes the requirement of notification of the Attorney General in a Cy pres proceeding. Notification of the AG is placed in G.S. 36C-2-205, Section 7.1 of this bill.

Section 18 amends G.S. 36C-G.S. 36C-4-418 to (i) clarify which specific statutes and subsections are subject to the rules in this statute governing distribution of assets upon termination of a trust and (ii) to delete the language regarding distributing trust property for a minor to a guardian, UTMA account or Chapter 33B custodial account. This language already appears in 36C-8-816.

Section 19 amends G.S. 36C-5-501(b) to clarify that subsection (a) concerning the rights of creditors to reach a beneficiary's interest do not apply to the extent that the beneficiary's interest is "protected or restricted by" a spendthrift provision, discretionary trust interest or protective trust interest. Article 5 of Chapter 36C provides for exceptions to protection of the beneficiary's interest. It was thought that the current wording of G.S. 36C-5-501(b) without the added words "protected or restricted by" could be construed as indicating that these exceptions did not apply to subsection (a).

Section 20 amends G.S. 36C-5-505(a) by adding a new subdivision (2a) to clarify that the trustee's discretionary authority to pay the tax on a trust's income or principal payable by the settlor is not an amount that can be distributed to or for the settlor's benefit within the meaning of G.S. 36C-5-505(a)(2a). In addition, the phrase "subject to other applicable law" was added at the beginning of subsection (a) in order to make clear that adoption of the Uniform Trust Code does not change existing North Carolina law on exemptions from creditors such as life insurance and homestead protections. In addition, G.S. 36C-5-505(b) is rewritten to clarify the meaning with respect to powers of withdrawal over property exercisable by a holder of the power other than the settlor.

Sections 21-23 repeal G.S. 36C-6-602(e) and (f) relating to the exercise of the settlor's powers by an agent or guardian with respect to the revocation and amendment of a revocable trust and distribution of the trust property. These provisions are restated in a new section G.S. 36C-6-602A. In addition, the new section G.S. 36C-6-602A clarifies that an agent may exercise a settlor's powers with respect to "additions to" a revocable trust and also provides that an agent may exercise the settlor's powers with respect to creation of a revocable trust. A general guardian or guardian of the estate may exercise the powers of the settlor with respect to a revocable trust as provided in G.S. 35A-1251(24). These provisions are placed in the new section G.S. 36C-6-602A because they deal with more than just revocation or amendment of a revocable trust which is the subject of G.S. 36C-6-602.

Section 24 amends G.S. 36C-6-603 to (i) revise the title to clarify the effect of the statute and (ii) to make clear that a third party who takes a direction from a person who is both a settlor and trustee of a revocable trust may rely on that direction as that of a settlor with the power to control that revocable trust.

Section 25 creates G.S. 36C-6-605 which makes the anti-lapse statute applicable to trusts. The statute sets the rules governing how a devise to a beneficiary of a revocable trust will be distributed (absent contrary intent in the terms of the trust) if the beneficiary predeceases the settlor.

Section 26 creates G.S. 36C-6-606 makes applicable to revocable trusts the rule that provisions in a will in favor of a spouse are revoked if the testator and the spouse divorce.

Section 26.1 creates G.S. 36C-6-607 which clarifies that a revocable trust may be modified by court order, but the settler is a necessary party.

Sections 27-29 amend G.S. 36C-7-703 to clarify the authority of multiple trustees. As revised, all trustees must exercise reasonable care with respect to actions of other trustees. A co-trustee who does not join in an action by other trustees, however, is not liable for that action. A trustee who is outvoted will not be liable for acquiescing (for example, by signing a deed the majority wants to sign) *unless* the outvoted trustee knows the majority action involves intentional misconduct or improper benefits to other trustees.

Section 30 amends G.S. 36C-7-704(d) to clarify that if a trust is a split-interest trust, the qualified beneficiaries (both charitable beneficiaries and individual beneficiaries) have the right to appoint a successor trustee by majority vote.

Section 31 amends G.S. 36C-8-802(d) to clarify that although a trustee's duties to a beneficiary extend to dealings outside the trust, the trustee may provide goods or services to the beneficiary outside the trust in the ordinary course of business on terms and conditions similar to those offered trustee's other customers.

Section 32 amends G.S. 36C-8-802(f)(1) to clarify that if a trust invests in a fund, that fund may receive services from the trustee's affiliate as well as the trustee, and further clarify that a trustee or an affiliate who provides services to the fund may receive compensation for those services, provided that the investment meets the requirements of the prudent investor rule. G.S. 36C-8-802(f)(2) is also amended to clarify that reasonable compensation for services rendered to a trust needs to be standard, but not necessarily standard in the community. (A trust might be in a place where those services are not usually rendered).

Section 33 amends G.S. 36C-8-802(h) to clarify that the general fairness standard applies to transactions between trusts, and that other specific statutory standards apply to particular dealings between trustee and beneficiary.

Section 34 amends G.S. 36C-8-808 to (i) clarify that a settlor's power to direct a revocable trust includes a direction the trust does not specifically authorize and (ii) to insert a missing word.

Section 34.1 amends G.S. 36C-8.810(d) to allow a trustee to invest and administer the assets of more than one trust provided the trustee keeps separate records.

Section 35 amends G.S. 36C-8-813 to clarify a beneficiary's rights to information about the trust. All current beneficiaries must receive a regular statement. But all "qualified beneficiaries" (current beneficiaries and remaindermen) can receive information on request. The act also repeals subsection (d) making the provisions applicable to all trusts regardless of when the trust was created.

Section 36 amends G.S. 36C-8-814(b) to clarify that an express reference to this subsection must be made for its rules not to apply and to add subsection (b)(4) the provisions of which appeared in the prior statute dealing with the same subject and was inadvertently omitted in bringing forward prior provisions.

Section 37 amends G.S. 36C-8-816(19) thru (19c) to clarify that a trustee may guarantee loans and pledge property to guarantee loans made to any beneficiary or to an enterprise in which the beneficiary has an ownership interest. Also amends subdivision (21) to clarify that a trustee would have the power to apply distributions for a beneficiary's benefit even though the beneficiary may not be under a legal

disability except that a beneficiary must consent to the application for the beneficiary's benefit of any amount required to be paid to the beneficiary.

Section 37.1 creates 36C-9-903A regarding a trustee's duties as to a contract of life insurance on the life of the settlor. These provisions are identical to current G.S. 32-71(c) and (d) which are repealed later in this act.

Sections 38- 42 regarding Article 6 of Chapter 32 relating to trustee compensation is revised generally to make uniform the provisions in the General Statutes concerning notices to beneficiaries of trusts. Specifically:

> **Section 38** amends G.S. 32-53 and the definitions of "beneficiary" and "representative" to whom notice must be given to conform these definitions to the clearer and more comprehensive provisions in Chapter 36C.
>
> **Section 39 and 41** amend G.S. 32-55(c) to make the provisions concerning when notice is deemed given the same as provided in Chapter 37A concerning the notice when a trust is proposed to be converted to a total return trust. G.S. 32-55(d) is amended to make the provisions of G.S. 36C-1-109 regarding notices apply for purposes of Article 6 of Chapter 32. G.S. 32-55(a) and 32-57 are revised to clarify that those provisions apply only if the terms of the trust do not specify a trustee's compensation.
>
> **Section 40** amends G.S. 32-56 to clarify who may initiate a proceeding under G.S. 32-57 for review of the reasonableness of a trustee's compensation if the terms of the trust do not specify compensation.
>
> **Section 42** amends G.S. 32-58 to add provisions concerning reimbursement for expenses and liens which were part of the Uniform Trust Code that should have been made a part of Chapter 32.

Section 43 repeals G.S. 32-71(c) and (d) regarding a trustee's responsibility regarding a life insurance contract on the life of the settlor. This language is moved to Section 37.1 of this act.

Section 44 amends G.S. 37A-1-104(c)(8) to permit a trustee to make an adjustment between income and principal when trustee compensation is defined as a percentage of trust income. Total return investing pursuant to the prudent investor rule recognized by Chapter 37A can result in a substantial reduction in (i) distributions to beneficiaries entitled to receive the trust's ordinary income and (ii) trustee's fees calculated as a percentage of such income. To enable the trustee to invest for total return without having to realize a portion of the return in the form of ordinary income, Chapter 37A authorizes adjustments between income and principal with respect to income beneficiaries, and for the same reasons the same kind of adjustment should be authorized with respect to trustee's fees calculated on income although fees so calculated are now rare.

Sections 45-46 amend Part 2 of Chapter 37A, Conversion to Unitrust, generally to make uniform in the General Statutes the provisions concerning notices to beneficiaries of trusts. Specifically, in G.S. 37A-1-104.1, the definitions of beneficiaries of a trust to whom notices must be given and who may represent the beneficiaries is revised to conform these provisions to those in Chapter 36C. The revised definitions

are applied throughout Part 2. Also G.S. 37A-1-104.2(d) is added to make the provisions regarding notices to beneficiaries in Chapter 36C apply to Part 2.

Section 47 amends G.S. 37A-1-104.3 to correct an incorrect citation and insert correct terminology.

Section 48 amends G.S. 37A-1-104.4 to clarify that assets such as a residence or tangible personal property used by the beneficiary may be excluded from the trustee's annual calculation of the fair market value of the trust property.

Section 49 amends G.S. 37A-1-104.4(b) to correct some terminology.

Section 49.1 repeals G.S. 37A-1-104.7 regarding marital deduction trusts. Existing law gave the spouse the right to compel for the spouse's lifetime a conversion of the trust from an income trust to a total return unitrust or the reconversion of the trust from a total return unitrust to an income trust.

Section 50 amends G.S. 37A-1-104.9 to correct some terminology.

Section 51 amends G.S. 53-163.2 to correct an incorrect citation.

Section 52 amends G.S. 35A-1251(24) to allow a guardian of the estate to petition the court for approval to allow the guardian of the estate to revoke or amend a revocable trust created by the guardian's ward, to make additions to or withdrawals from any such trust or to distribute property from the trust. The guardian of the estate cannot exercise these powers in a manner that would alter the designation of beneficiaries to receive the ward's property upon the ward's death.

EFFECTIVE DATE: The act becomes effective October 1, 2007, and applies to all trusts created before, on, or after that date; all judicial proceedings concerning trusts commenced on or after that date; and all judicial proceedings concerning trusts commenced before that date unless the application of the act would substantially interfere with the effective conduct of the court or prejudice the rights of the parties, in which case the law as it existed on September 30, 2007 shall apply.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 10, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 470	Increase Age for Eight-Year Drivers License.	Senator Shaw
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 1026	Drivers License Issuance/Expiration Dates.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, April 10, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 470	Increase Age for Eight-Year Drivers License.	Senator Shaw
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 1026	Drivers License Issuance/Expiration Dates.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 10, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 10, 2007, with twelve members present. Senator Hartsell introduced pages Franciska Elliott, Fredaricka Elliott, who are twins and Hayden Zurl and Chelsea Zurl who are brother and sister and thanked them for their service.

SB 1026 (Drivers License Issuance/Expiration Dates.) This bill was returned to the Committee from the Senate Floor. As it was Senator Hartsell's bill, he invited Senator Berger to preside. Senator Hartsell explained the bill and Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 470 (Increase Age for Eight-Year Drivers License.) Senator Hartsell recognized Senator Shaw to explain the bill. Questions from committee members were answered by Senator Shaw and Ms. Kory Goldsmith, Staff Attorney. Mr. Tony Spence, Assistant Director of Driver and Vehicle Services Division of Motor Vehicles spoke on the bill. The bill will be carried over to the Thursday meeting with a pending motion from Senator Dannelly for a favorable report with a serial referral to Appropriations.

SB 677 (Expunge Nonviolent Felony/Youthful Offender.) Senator Hartsell called for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Queen so moved, all voted and the motion carried. Senator Berger was recognized to explain the bill. Mr. Brian Lewis, Executive Director of Covenant with North Carolina's Children, Mr. Mike Rieder, Executive Director of Haven House, Mr. Bill Rowe of the North Carolina Justice Center and Representative Bordsen all spoke on the bill. After much discussion, and a motion for a favorable report from Senator Dannelly, it was decided to carry the bill over to the Thursday meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 10 April 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCACDL
Paul Pulley	NCATL
Mike Rider	HAVEN HOUSE
Eddie Caldwell	NC Sheriffs Assn
CATHERYN COTTEN	DUKE UNIVERSITY
[illegible]	NCICU
Andy Willis	UNC-GA
ANN URE	DUKE U
Johanna Reese	DOT
Tony Spence	DOT-DMV
P. Bly Hall	General Statutes Commission

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 10 April 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Baden	NCATL
John McKay	Gov Office
Kelly Parsons	Teachers
Leanne Winner	NC SBA
Katherine Joyce	NCAE
Bill O'Donnell	NCSBA
Kieth McLean	NC Rural Center
[illegible]	[illegible]
Jo McCants	AOC
TROY PAGE	NC Sentencing Commission
Barbara Cansler	BCBSNC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 10 April 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flaherty	NCHCFM
Daniel Baum	Kennedy Covington
Marvin Waters	CCPS
Wayne Yi	Staff
Jeffrey Walston	DOA - YA10
Ross Mallon	AOC
Russ Dubishy	IFNIC
Christine Williams	DC Drug Policy
Patrice Roesler	NCACC
Michelle Hall	NCGA
Brian Lewis	Covenant w/ NC's Children

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 10 April 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Sara Schmidt	Action for Children

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, April 10, 2007

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

FAVORABLE

S.B. **1026** Drivers License Issuance/Expiration Dates.
Sequential Referral: None
Recommended Referral: None

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

S.B. **543** UNC Public Records Amendments.-AB
Draft Number: pcs 55416
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **777** Amend CPA Criminal Punishment.
Draft Number: pcs35356
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 470

Short Title:	Increase Age for Eight-Year Drivers License.	(Public)
Sponsors:	Senator Shaw.	
Referred to:	Judiciary 1 (Civil).	

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AGE OF PERSONS RECEIVING AN EIGHT-YEAR DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

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

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection.

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 shall expire on the person's twenty-first birthday.

(2) Duration of license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than ~~54~~ 65 years old expires eight years after the date of issuance. A drivers license issued to a person at least ~~54~~ 65 years old expires five years after the date of issuance.

(3) Duration of license. – A drivers license that was issued by the Division and is renewed by the Division expires at the end of the period provided by this subsection after the expiration date of the license that is renewed unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

SECTION 2. This act becomes effective January 1, 2008.

SENATE BILL 470:
Increase Age for Eight-Year Drivers License

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 9, 2007
Introduced by:	Sen. Shaw	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 470 would amend G.S. 20-7(f) to provide that a North Carolina drivers license issued to a person between the ages of 18 and 65 would expire 8 years after the date of issuance.***

CURRENT LAW: G.S. 20-7(f) provides that a drivers license issued to a person between the ages of 18 and 53 will expire 8 years after the date of issuance. A drivers license issued to a person who is at least 54 years of age expires 5 years after the date of issuance.

EFFECTIVE DATE: The act would become effective January 1, 2008.

BACKGROUND: In 2006, and at the recommendation of the Joint Legislative Oversight Committee on Transportation, the General Assembly amended G.S. 20-7(f) to provide that a drivers license issued to a person between the ages of 18 and 53 would expire after 8 years. Prior to that change, a drivers license issued to a person over the age of 20 expired after 5 years. A license issued to a person over the age of 62 expired after 5 years regardless of whether the person's age on that date was divisible by 5.

S0470e1-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: Senate Bill 470 (First Edition)

SHORT TITLE: Increase Age for Eight-Year Drivers License.

SPONSOR(S): Senator Shaw

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
REVENUES	$1,907,085	$3,971,709	$4,064,157	$4,120,743	$3,094,728
EXPENDITURES	$12,874	$0	$0	$0	$0
POSITIONS (cumulative):	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Transportation, Division of Motor Vehicles

EFFECTIVE DATE: January 1, 2008

BILL SUMMARY:
This act increases the age for persons receiving an eight-year driver license. The increase in age is from 18-54 years old to 18-65 years old. Individuals over 65 years old will now be issued a five-year driver license.

ASSUMPTIONS AND METHODOLOGY:

- There will be costs associated with programming and ITS charges for the State Automated Driver License System (SADLS) to change the age for the eight-year driver license within the system.
- There will be additional revenues collected during the first five years, since license fees are based on the number of years of its issuance. After five years of the renewal customers receiving the eight-year license there will be a reduction in the number of issuances since individuals will not have to renew as frequently, and revenues should equalize after an eight-year cycle.

SOURCES OF DATA:
North Carolina Department of Transportation, Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: L isa Hollowell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: April 10, 2007

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 677*

Short Title:	Expunge Nonviolent Felony/Youthful Offender.	(Public)
Sponsors:	Senators Berger of Franklin; Dannelly and Malone.	
Referred to:	Judiciary ll (Criminal).	

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

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

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

and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma or a high school graduation equivalency certificate or that the petitioner is attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma or high school graduation equivalency certificate or is attending a program in pursuit of a General Education Development Degree or adult high school diploma.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom an order has been entered pursuant to this subsection shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction.

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

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

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

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2007, and expires December 1, 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 677*
PROPOSED COMMITTEE SUBSTITUTE S677-CSRD-10 [v.3]

4/9/2007 4:05:30 PM

Short Title: Expunge Nonviolent Felony/Youthful Offender. (Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

(b) Notwithstanding any other provision of law, if a person is convicted of more than one nonviolent felony in the same session of court and the criminal processes for all of the nonviolent felonies were served upon the person at one time, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple convictions shall be expunged from the person's record in accordance with this section. Nonviolent felonies for which criminal processes are served upon a person at separate times may not be combined for the purposes of expunction of the records of convictions under this section, regardless of whether or not they are disposed of in the same session of court.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor

other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development Degree.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate or a General Education Development Degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom an order has been entered pursuant to this subsection shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing employment requiring certification under Chapters 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

(e) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified

copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted expunctions under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(2) To State and local law enforcement agencies for employment purposes only.

(3) To The North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.

(4) To The North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only.

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 17C-13 reads as rewritten:

"§ 17C-13. ~~Pardons.~~Pardons; expunctions.

(a) When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative

Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 3. G.S. 17E-12 reads as rewritten:

"**§ 17E-12. ~~Pardons.~~ Pardons; expunctions.**

(a) When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 4. This act becomes effective December 1, 2007, and expires December 1, 2014.

SENATE BILL 677:
Expunge Nonviolent Felony/Youthful Offender

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 9, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S677-CSRD-10		Committee Counsel

SUMMARY: ***Senate Bill 677 would provide for the expunction of a nonviolent felony conviction from the criminal record of an offender who was under the age of 18 at the time of the commission of the nonviolent felony. A petition for expunction may not be filed earlier than two years after the latter or either the date of the conviction or the completion of the active sentence, period of probation, or post- release supervision. The petition shall include affidavits supporting the following: completion of 100 hours of community service, no prior or subsequent felony or misdemeanor convictions (other than traffic violations), no outstanding warrants or pending criminal cases, no outstanding restitution orders or civil judgments, and possession or current pursuit of a high school diploma, high school graduation equivalency certificate, or General Education Development (GED) Degree.***

[As introduced, this bill was identical to H898, as introduced by Reps. Bordsen, Crawford, Hall, Jones, which is currently in House Juvenile Justice.]

CHANGES MADE BY PCS:

- G.S. 15A-150(b) - Would change language found in the 1st edition of the bill, to provide that if a person is convicted of more than one nonviolent felony in the same session of court, the multiple nonviolent felony convictions shall be treated as one nonviolent felony for expunction purposes only if the criminal processes for all of the nonviolent felonies were served upon the person at one time.
- G.S. 15A-150(c)(1) and G.S. 15A-150(d)(1) – Would change references to "good behavior" found in the 1st edition of the bill to "good moral character."
- G.S. 15A-150(c)(4) and G.S. 15A-150(d)(3) – Would add an additional requirement on the application to the Administrative Office of the Courts (AOC) to request and authorize the Department of Justice to search for any outstanding warrants or pending criminal cases.

  To order expungement a court must find, among other things, that the petitioner has no outstanding warrants or pending criminal cases.
- G.S. 15A-150(c)(7) – Would require the petitioner for expunction to possess a high school diploma, a high school graduation equivalency certificate, or a GED (language of the 1st edition of the bill provided "the petitioner is attending a basic skills program in pursuit of a [GED] or adult high school diploma).
- G.S. 15A-150(d), last paragraph, would require persons pursuing employment with law enforcement agencies to disclose felony convictions even if they have been expunged.
- G.S. 15A-150(g) – Would add language allowing AOC to disclose information in their confidential expunction files to law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, The North Carolina Sheriffs'

Education and Training Standards Commission for employment and certification purposes only.

- Sections 2 and 3 of the bill would give the Commissions access to the expunction information and authorize the Commissions to deny, suspend, or revoke certification based on an expunged felony conviction.

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

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

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

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2], "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted"[3], and "Expunction of records when pardon of innocence is granted."[4]

BILL ANALYSIS: The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-150 would allow for the expunction of a nonviolent felony from the criminal records of a first time offender who is under 18 years of age at the time of the commission of the nonviolent felony if the person has no previous or subsequent felony or misdemeanor convictions, other than traffic violations. "Nonviolent felony" would include any felony *except* the following:

- A Class A through G felony;
- A felony that includes assault as an essential element of the offense;

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[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.
[4] G.S. 15A-149.

- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders); and
- Any Chapter 90 felony offense involving methamphetamines.

If the person is convicted of more than one nonviolent felony in the same session of court and the **criminal processes for all of the nonviolent felonies were served upon the person at one time**, the bill provides that the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction and be expunged from the person's record by the expunction order issued under this section.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition may not be filed earlier than two years after the date of conviction or after the time that any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of **good moral character** by the petitioner for the two years following conviction, stating that the petitioner has not been convicted of any felony or misdemeanor charge, other than traffic violations, under the laws of the United States, this State or any other state during that time;

2) Two affidavits of **good moral character** from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check and **search for outstanding warrants or pending criminal cases** by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding;

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services; and

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, high school graduation equivalency certificate, **or a GED**.

The petition is served on the district attorney, who has 10 days to file any objections. The district attorney is directed to contact the victim, if any, to notify the victim of the request for expunction prior to the hearing date. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the status he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation. Department of Justice DNA records and samples stored in the State DNA database and the State DNA Databank, however, shall not be expunged or destroyed as a result of any order for expunction of records issued under this section.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to

also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each county would be required to file with the AOC the names of those persons granted a discharge under the provisions of this section and the AOC must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge, and to **law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, and The North Carolina Sheriffs' Education and Training Standards Commission for employment and certification purposes only.**

The PCS would require persons pursuing employment with law enforcement agencies to disclose felony convictions even if they have been expunged and would give the Commissions access to the expunction information and authorize the Commissions to deny, suspend, or revoke certification based on an expunged felony conviction.

If a probation officer is assigned to a person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

Filing fees for the expunction petition would be set at $100.00 unless the petitioner is indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2007 and would expire December 1, 2014.

Ben Popkin, counsel to Senate Judiciary II, substantially contributed to this summary.

S0677e1-SMRI-CSRD-10

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1026*

Short Title:	Drivers License Issuance/Expiration Dates.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CORRECT A PROCEDURAL TECHNICAL ERROR IN THE REQUIREMENT THAT AN APPLICANT PRESENT A VISA OF LIMITED DURATION FROM THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND TO CORRECT AN APPARENT ERROR IN THE EXPIRATION DATE FOR DRIVERS LICENSES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this ~~subsection.~~subsection:

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 ~~shall expire~~expires on the person's twenty-first birthday.

(2) Duration of original license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than 54 years old expires ~~eight years after the date of issuance.~~on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person at least 54 years old expires ~~five years after the date of issuance.~~on the birthday of the licensee in the fifth year after issuance.

(2a) Duration of renewed licenses. – A renewed drivers license that was issued by the Division to a person at least 18 years old but less than 54 years old expires eight years after the expiration date of the license that is renewed. A renewed drivers license that was issued by the Division to a person at least 54 years old expires five years after the expiration date of the license that is renewed.

(3) Duration of ~~license.~~license for certain other drivers. ~~A drivers license that was issued by the Division and is renewed by the Division expires at the end of the period provided by this subsection after the expiration date of the license that is renewed~~ The durations listed in subdivisions (1), (2), and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. ~~A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.~~

(3a) When to renew. – A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(5) **(Effective July 1, 2008)** License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant.

...."

SECTION 2. G.S. 20-7(f)(3), as amended by Section 1 of this act, reads as rewritten:

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3) Duration of license for certain other drivers. –The durations listed in subdivisions (1), (2) and (2a) if this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds ~~a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States.~~valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States."

SECTION 3. G.S. 20-7(s) reads as rewritten:

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(s) Notwithstanding the requirements of subsection (b1) of this section that an applicant present a valid social security number, the Division shall issue a drivers license of limited duration, under subsection (f) of this section, to an applicant present in the United States ~~under a valid visa issued to the applicant by the United States Department of Homeland Security if the applicant presents that valid visa.~~who holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States if the applicant presents that valid documentation and meets all other requirements for a license of limited duration."

SECTION 4. 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:

...

(2) Canceled. – As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or ~~fraud~~ fraud, or to which G.S. 20-15(a)(3) applies, is void and terminated.

...."

SECTION 5. G.S. 20-15(a) reads as rewritten:

"**§ 20-15. Authority of Division to cancel license or endorsement.**

(a) The Division shall have authority to cancel any driver's license upon determining ~~that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.~~any of the following:

(1) The licensee was not entitled to the issuance of the license under this Chapter.

(2) The licensee failed to give the required or correct information on the license application or committed fraud in making the application.

(3) The licensee is no longer authorized under federal law to be legally present in the United States."

SECTION 6. Section 1 of this act becomes effective January 1, 2007, and applies to drivers licenses issued or renewed on or after that date. Sections 2 through 5 are effective when this act becomes law and applies to drivers licenses issued or renewed on or after that date. Section 6 of this act is effective when it becomes law.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 17, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 470	Increase Age for Eight-Year Drivers License.	Senator Shaw
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 785	ATV Use for Emergencies.-AB	Senator Kerr
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

2007-2008

SENATE JUDICIARY II COMMITTEE

MINUTES

Senate Judiciary II (Criminal) Committee
Tuesday, April 17, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 470	Increase Age for Eight-Year Drivers License.	Senator Shaw
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 785	ATV Use for Emergencies.-AB	Senator Kerr
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 17, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 17, 2007, with fourteen members present. Senator Hartsell introduced pages Ashley Bryant and Joe Parrish and thanked them for their service.

SB 470 (Increase Age for Eight-Year Drivers License.) At the April 10th meeting, Senator Dannelly moved for a favorable report which was held due to the bill being carried over to today's meeting. Senator Hartsell noted that there was a Proposed Committee Substitute for the bill and Senator Dannelly withdrew his previous motion. He then moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Shaw was recognized to explain the bill. Mr. Wayne Hurder, Director of Driver & Vehicle Services of the Division of Motor Vehicles spoke on the bill. Questions from Senators Jones and Apodaca were answered by Senator Shaw. Senator Dannelly moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill, rolled into a new Committee Substitute with a referral to Appropriations. All voted and the motion carried.

SB 677 (Expunge Nonviolent Felony/Youthful Offender.) This bill was first heard at the April 10th meeting and was carried over to today's meeting. Senator Hartsell noted that the motion for a favorable report from Senator Dannelly had been held due to the bill being carried over to today's meeting. He also noted that there was a Proposed Committee Substitute. Senator Dannelly withdrew his previous motion and moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger was recognized to explain the bill. Senator Jones sent forward a friendly amendment and moved that it be accepted. All voted and the motion carried. Questions from Senators Atwater, Allran, Dannelly, Jones and Bingham were answered by Senator Berger and Mr. Paul Pulley representing the Academy of Trial Lawyers. Senator Hartsell invited anyone from the audience who wished to speak on the bill to do so. Speaking in opposition to the bill were: Ms. Leanne Winner, of the North Carolina School Board Association, Mr. Jack Cozart, Association of Home and Hospice Care, Ms. Mel Chilton, Executive Director of North Carolina Victim's Association Network, District Attorney Colon Willoughby, Association of District Attorneys, and Mr. Eddie Caldwell representing the North Carolina Sheriffs Association. The bill will be carried over.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, April 17, 2007

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

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

S.B. **470** Increase Age for Eight-Year Drivers License.

Draft Number:	PCS 55423
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 4-17-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCFPC
	Carolinas HealthCare Syst.
	DA 10th Dist
	Conference of D.A.s
	NC Sheriffs' Assn.
	NC Victim Assistance Network
	NCATL
	NCSBA
	NCSBA
	WOMBLE
	NCASA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	AOC
Kevin Lacy	NCDOT
[signature]	[illegible]
Johanna Reese	DOT
[signature] Dulisky	IFNC
[signature]	Staff
Brandy Bynum	Action for Children
Selena Berrier	Child Fatality Task Force
Lisa Martin	NC Home Builders
Alastair Macaulay	NC Home Builders
[signature]	NC BAA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Barlow	NCATL
John McHugh	Gov Office

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 470

Short Title:	Increase Age for Eight-Year Drivers License.	(Public)
Sponsors:	Senator Shaw.	
Referred to:	Judiciary 1 (Civil).	

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AGE OF PERSONS RECEIVING AN EIGHT-YEAR DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

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

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection.

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 shall expire on the person's twenty-first birthday.

(2) Duration of license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than ~~54~~ 65 years old expires eight years after the date of issuance. A drivers license issued to a person at least ~~54~~ 65 years old expires five years after the date of issuance.

(3) Duration of license. – A drivers license that was issued by the Division and is renewed by the Division expires at the end of the period provided by this subsection after the expiration date of the license that is renewed unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.
b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

SECTION 2. This act becomes effective January 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 470
PROPOSED COMMITTEE SUBSTITUTE S470-CSRC-11 [v.5]

4/16/2007 7:59:58 PM

Short Title: Drivers Licenses - Fix Expir./8-Year to 65. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO CORRECT AN APPARENT ERROR IN THE EXPIRATION DATE FOR DRIVERS LICENSES AND TO INCREASE THE AGE OF PERSONS RECEIVING AN EIGHT-YEAR DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

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

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this ~~subsection.~~subsection:

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 ~~shall expire~~expires on the person's twenty-first birthday.

(2) Duration of original license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than 54 years old expires ~~eight years after the date of issuance.~~on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person at least 54 years old expires ~~five years after the date of issuance.~~on the birthday of the licensee in the fifth year after issuance.

(2a) Duration of renewed licenses. – A renewed drivers license that was issued by the Division to a person at least 18 years old but less than 54 years old expires eight years after the expiration date of the license that is renewed. A renewed drivers license that was issued by the Division to a person at least 54 years old expires five years after the expiration date of the license that is renewed.

(3) Duration of ~~license.~~license for certain other drivers. ~~– A drivers license that was issued by the Division and is renewed by the Division expires~~

~~at the end of the period provided by this subsection after the expiration date of the license that is renewed~~ The durations listed in subdivisions (1), (2), and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. ~~A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.~~

(3a) When to renew. – A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(5) **(Effective July 1, 2008)** License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant.

...."

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

"**§ 20-7. Issuance and renewal of drivers licenses.**

...

(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

(1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 expires on the person's twenty-first birthday.

(2) Duration of original license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than ~~54~~ 65 years old expires on the birthday of the licensee in the eighth year after issuance. A drivers license issued to a person at least ~~54~~ 65 years old expires on the birthday of the licensee in the fifth year after issuance.

(2a) Duration of renewed licenses. – A renewed drivers license that was issued by the Division to a person at least 18 years old but less than ~~54~~ 65 years old expires eight years after the expiration date of the license that is renewed. A renewed drivers license that was issued by the Division to a person at least ~~54~~ 65 years old expires five years after the expiration date of the license that is renewed.

(3) Duration of license for certain other drivers. –The durations listed in subdivisions (1), (2), and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States.

(3a) When to renew. – A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

(5) **(Effective July 1, 2008)** License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's

drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant.

...."

SECTION 3. Section 1 of this act becomes effective January 1, 2007, and applies to drivers licenses issued or renewed on or after that date. Section 2 of this act becomes effective January 1, 2008. The remainder of this act is effective when it becomes law.

SENATE BILL 470:
Drivers Licenses – Fix Expir./8-Year to 65

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 16, 2007
Introduced by:	Sen. Shaw	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S470-CSRC-11		

SUMMARY: The Proposed Committee Substitute to Senate Bill 470 would amend G.S. 20-7(f) to: (i) correct errors in the expiration date for drivers licenses, and (ii) provide that a North Carolina drivers license issued to a person between the ages of 18 and 65 would expire 8 years after the date of issuance.

CURRENT LAW: G.S. 20-7(f) provides that a drivers license issued to a person between the ages of 18 and 53 will expire 8 years after the date of issuance. A drivers license issued to a person who is at least 54 years of age expires 5 years after the date of issuance.

BILL ANALYSIS:

Section 1 amends G.S. 20-7(f) to restores the licensee's birthday as the expiration date of a drivers license for a person 18 years old or older. Section 1 also makes stylistic updates and organizational changes. This Section is identical to Section 1 of SB1026 which this committee has given a favorable report.

Section 2 incorporates the changes to G.S. 20-7(f) from Section 1, then amends the statute to provide that a North Carolina drivers license issued to a person between the ages of 18 and 65 would expire 8 years after the date of issuance.

EFFECTIVE DATES: Section 1 is retroactively effective to January 1, 2007, and applies to drivers licenses issued on or after that date. Section 1 would become effective January 1, 2008. The remainder of the act is effective when the bill becomes law.

BACKGROUND: In 2006, and at the recommendation of the Joint Legislative Oversight Committee on Transportation, the General Assembly amended G.S. 20-7(f) to provide that a drivers license issued to a person between the ages of 18 and 53 would expire after 8 years. Prior to that change, a drivers license issued to a person over the age of 20 expired after 5 years. A license issued to a person over the age of 62 expired after 5 years regardless of whether the person's age on that date was divisible by 5.

When the duration of a drivers license was extended last year in S.L. 2006-257 to eight years, or five years for those 54 or older, the expiration date was changed to be eight (or five) years "after issuance" rather than on the licensee's birthday in the eighth (or fifth) year after issuance. The General Statutes Commission is informed that the change was inadvertent, and the change back to the licensee's birthday was requested by the Division of Motor Vehicles.

S0470e1-SMRC-CSRC-11

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 677*

Short Title:	Expunge Nonviolent Felony/Youthful Offender.	(Public)
Sponsors:	Senators Berger of Franklin; Dannelly and Malone.	
Referred to:	Judiciary ll (Criminal).	

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

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

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

and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma or a high school graduation equivalency certificate or that the petitioner is attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma or high school graduation equivalency certificate or is attending a program in pursuit of a General Education Development Degree or adult high school diploma.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom an order has been entered pursuant to this subsection shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction.

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

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

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

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2007, and expires December 1, 2014.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. ~~SB~~ 677

COMMITTEE SUBSTITUTE _____

DATE 4/17/07

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

Rep.)
Sen.) Jones

moves to amend the bill on page 2, line 43

( ) WHICH CHANGES THE TITLE

by deleting the number "10" and substituting the number "30"; and on page 4, line 33, by deleting the phrase ~~"dollars ($100.00)"~~ "dollars ($100.00)" and substituting the phrase "twenty-five dollars ($125.00)"; and on page 5, line 18, by rewriting the line to read:

"SECTION 4. This act becomes effective December 1, 2007, and expires December 1, 2014.",

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 677*
PROPOSED COMMITTEE SUBSTITUTE S677-CSRD-10 [v.6]

4/16/2007 5:00:56 PM

Short Title: Expunge Nonviolent Felony/Youthful Offender. (Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been charged and arrested for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file

a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development Degree.

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

hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

(d) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate or a General Education Development Degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(e) No person as to whom an order has been entered pursuant to subsection (d) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing employment requiring certification under Chapters 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal background check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(f) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified

copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of any other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(g) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(h) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted expunctions under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(2) To State and local law enforcement agencies for employment purposes only.

(3) To The North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.

(4) To The North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only.

(i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(j) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 17C-13 reads as rewritten:

"§ 17C-13. ~~Pardons.~~Pardons; expunctions.

(a) When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative

Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 3. G.S. 17E-12 reads as rewritten:

"**§ 17E-12. ~~Pardons.~~ Pardons; expunctions.**

(a) When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 4. This act becomes effective December 1, 2007.

SENATE BILL 677:
Expunge Nonviolent Felony/Youthful Offender

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 16, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S677-CSRD		Committee Counsel

SUMMARY: ***Senate Bill 677 would provide for the expunction of a nonviolent felony conviction from the criminal record of an offender who was under the age of 18 at the time of the commission of the nonviolent felony. A petition for expunction may not be filed earlier than two years after the latter or either the date of the conviction or the completion of the active sentence, period of probation, or post- release supervision. The petition shall include affidavits supporting the following: completion of 100 hours of community service, no prior or subsequent felony or misdemeanor convictions (other than traffic violations), no outstanding warrants or pending criminal cases, no outstanding restitution orders or civil judgments, and possession or current pursuit of a high school diploma, high school graduation equivalency certificate, or General Education Development (GED) Degree.***

[As introduced, this bill was identical to H898, as introduced by Reps. Bordsen, Crawford, Hall, Jones, which is currently in House Juvenile Justice.]

CHANGES MADE BY PCS:

- G.S. 15A-150(b) - Would change language found in the 1st edition of the bill, to provide that if a person is convicted of more than one nonviolent felony in the same session of court, the multiple nonviolent felony convictions shall be treated as one nonviolent felony for expunction purposes only if none of the nonviolent felines are alleged to have occurred after the person had already been charged and arrested for a nonviolent felony.
- G.S. 15A-150(c)(1) and G.S. 15A-150(d)(1) – Would change references to "good behavior" found in the 1st edition of the bill to "good moral character."
- G.S. 15A-150(c)(4) and G.S. 15A-150(d)(3) – Would add an additional requirement on the application to the Administrative Office of the Courts (AOC) to request and authorize the Department of Justice to search for any outstanding warrants or pending criminal cases.

  To order expungement a court must find, among other things, that the petitioner has no outstanding warrants or pending criminal cases.
- G.S. 15A-150(c)(7) – Would require the petitioner for expunction to possess a high school diploma, a high school graduation equivalency certificate, or a GED (language of the 1st edition of the bill provided "the petitioner is attending a basic skills program in pursuit of a [GED] or adult high school diploma).
- G.S. 15A-150(d), last paragraph, would require persons pursuing employment with law enforcement agencies to disclose felony convictions even if they have been expunged.
- G.S. 15A-150(g) – Would add language allowing AOC to disclose information in their confidential expunction files to law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, The North Carolina Sheriffs'

Education and Training Standards Commission for employment and certification purposes only.

- Sections 2 and 3 of the bill would give the Commissions access to the expunction information and authorize the Commissions to deny, suspend, or revoke certification based on an expunged felony conviction.
- Would allow the court to use its discretion in ordering expunction of nonviolent felonies from a person's record, rather than directing the court to issue the order following a hearing at which the court finds the required elements to be present (15A-150(d)).
- Removed sunset provision from the effective date section (Section 4).

[As introduced, this bill was identical to H898, as introduced by Reps. Bordsen, Crawford, Hall, Jones, which is currently in House Juvenile Justice .]

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

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

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

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[2], "Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted"[3], and "Expunction of records when pardon of innocence is granted."[4]

BILL ANALYSIS: The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-150 would allow for the

[1] G.S. 15A-145(a)(1) through (4).
[2] G.S. 15A-147.
[3] G.S. 15A-148.
[4] G.S. 15A-149.

expunction of a nonviolent felony from the criminal records of a first time offender who is under 18 years of age at the time of the commission of the nonviolent felony if the person has no previous or subsequent felony or misdemeanor convictions, other than traffic violations. "Nonviolent felony" would include any felony *except* the following:

- A Class A through G felony;
- A felony that includes assault as an essential element of the offense;
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders); and
- Any Chapter 90 felony offense involving methamphetamines.

If the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been charged and arrested for a nonviolent offense, the bill provides that the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction and be expunged from the person's record by the expunction order issued under this section.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition may not be filed earlier than two years after the date of conviction or after the time that any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of **good moral character** by the petitioner for the two years following conviction, stating that the petitioner has not been convicted of any felony or misdemeanor charge, other than traffic violations, under the laws of the United States, this State or any other state during that time;

2) Two affidavits of **good moral character** from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check and **search for outstanding warrants or pending criminal cases** by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding;

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services; and

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, high school graduation equivalency certificate, **or a GED**.

The petition is served on the district attorney, who has 10 days to file any objections. The district attorney is directed to contact the victim, if any, to notify the victim of the request for expunction prior to the hearing date. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all

of the requirements, the judge shall order that the petitioner be restored to the status he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation. Department of Justice DNA records and samples stored in the State DNA database and the State DNA Databank, however, shall not be expunged or destroyed as a result of any order for expunction of records issued under this section.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each county would be required to file with the AOC the names of those persons granted a discharge under the provisions of this section and the AOC must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge, and to **law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, and The North Carolina Sheriffs' Education and Training Standards Commission for employment and certification purposes only.**

The PCS would require persons pursuing employment with law enforcement agencies to disclose felony convictions even if they have been expunged and would give the Commissions access to the expunction information and authorize the Commissions to deny, suspend, or revoke certification based on an expunged felony conviction.

If a probation officer is assigned to a person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

Filing fees for the expunction petition would be set at $100.00 unless the petitioner is indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2007.

Jennifer McGinnis, counsel to Senate Judiciary II, substantially contributed to this summary.

S0677e1-SMRD-CSRD

FELONY CLASSIFICATION
UNDER THE STRUCTURED SENTENCING ACT
Offenses committed on or after December 1, 2002

FELONY CLASS	GENERAL STATUTES SECTION	OFFENSE
H	G.S. 14-3(b)	Unclassified misdemeanor which is infamous, done in secrecy and malice, or with deceit and intent to defraud.
H	G.S. 14-7.20	Continuing criminal enterprise.
H	G.S. 14-11	Activities aimed at overthrow of government; Use of public buildings (second offense).
H	G.S. 14-12.1	Certain subversive activities made unlawful.
H	G.S. 14-32.3(a)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
H	G.S. 14-32.3(c)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
H	G.S. 14-33.2	Habitual misdemeanor assault.
H	G.S. 14-44	Using drugs or instruments to destroy unborn child.
H	G.S. 14-54	Breaking or entering buildings.
H	G.S. 14-62.1	Burning of building or structure in process of construction.
H	G.S. 14-63	Burning of boats and barges.
H	G.S. 14-64	Burning of ginhouses and tobacco houses.
H	G.S. 14-65	Fraudulently setting fire to dwelling houses.
H	G.S. 14-66	Burning of personal property.
H	G.S. 14-67.1	Burning other buildings.
H	G.S. 14-69.1(a)	Making a false report concerning destructive device. *(Was Class 1 misdemeanor - Effective 12/1/97)*
H	G.S. 14-69.1(c)	Making a false report concerning destructive device in a public building.
H	G.S. 14-69.2(a)	Perpetrating hoax by use of false bomb or other device. *(Was Class 1 misdemeanor - Effective 12/1/97)*
H	G.S. 14-69.2(c)	Perpetrating hoax by use of false bomb or other device in a public building.
H	G.S. 14-71.1	Possessing stolen goods.
H	G.S. 14-72	Larceny of property worth more than $1,000.

Felony Classification Continued

H	G.S. 14-72	Receiving stolen goods (G.S. 14-71) or possessing stolen goods (G.S. 14-71.1) worth more than $1,000.
H	G.S. 14-72(b)(1)	Larceny from the person; receiving or possessing stolen goods from the person.
H	G.S. 14-72(b)(2)	Larceny pursuant to burglary, breaking or entering, or burglary with explosives; receiving or possessing stolen goods pursuant to these offenses.
H	G.S. 14-72(b)(3)	Larceny of explosive or incendiary device or substance; receiving or possessing stolen explosive or incendiary device or substance.
H	G.S. 14-72(b)(4)	Larceny of firearm; receiving or possessing stolen firearm.
H	G.S. 14-72(b)(5)	Larceny of record or paper in the custody of the N.C. State Archives; receiving or possessing stolen record or paper.
H	G.S. 14-72.1(d1)	Concealment of merchandise in mercantile establishments.
H	G.S. 14-72.2	Unauthorized use of an aircraft.
H	G.S. 14-74	Larceny by servants and other employees. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-75	Larceny of chose in action.
H	G.S. 14-75.1	Larceny of secret technical processes.
H	G.S. 14-78	Larceny of ungathered crops.
H	G.S. 14-79	Larceny of ginseng.
H	G.S. 14-79.1	Larceny of pine straw.
H	G.S. 14-81(a)	Larceny of horses, mules, swine, or cattle.
H	G.S. 14-85	Pursuing livestock with intent to steal.
H	G.S. 14-90	Embezzlement of property received by virtue of office or employment. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-93	Embezzlement by treasurers of charitable and religious organizations. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-94	Embezzlement by officers of railroad companies. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-97	Appropriation of partnership funds by partner to personal use. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-98	Embezzlement by surviving partner. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-100	Obtaining property by false pretenses. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 14-101	Obtaining signatures by false pretenses.
H	G.S. 14-121	Selling of certain forged securities.
H	G.S. 14-122	Forgery of deeds, wills, and certain other instruments.
H	G.S. 14-168.1	Conversion by bailee, lessee, tenant, or attorney-in-fact for more than $400.00.

Felony Classification Continued

H	G.S. 14-221.2	Altering court documents or entering unauthorized judgments.
H	G.S. 14-225.2(a)(1)	Harassment of and communication with jurors.
H	G.S. 14-226	Intimidating or interfering with witnesses.
H	G.S. 14-254	Malfeasance of corporation officers and agents.
H	G.S. 14-256	Prison breach and escape from county or municipal confinement facilities or officers (by convicted felons). *(Was Class I - Effective 12/1/97)*
H	G.S. 14-256.1	Escape from private correctional facility.
H	G.S. 14-258	Conveying messages and weapons to or trading with convicts and other prisoners.
H	G.S. 14-258.1(a)	Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities.
H	G.S. 14-258.2	Possession of dangerous weapon in prison.
H	G.S. 14-258.2(b)	Assisting a prisoner in attempting to escape and committing an assault resulting in bodily injury or effecting the escape.
H	G.S. 14-269.8	Purchase of firearms by person subject to domestic violence order prohibited.
H	G.S. 14-277(b)(5)	Impersonation of a law-enforcement or other public officer.
H	G.S. 14-277.3	Stalking (when there is a court order in effect). *(Was Class A1 misdemeanor - Effective 3/1/02)*
H	G.S. 14-288.2(c)	Riot (property damage greater than $1500 or serious bodily injury).
H	G.S. 14-288.6(b)	Looting.
H	G.S. 14-288.20(b)	Training on certain weapons for use in a civil disorder.
H	G.S. 14-291.2	Pyramid and chain schemes prohibited. *(Was Class 2 misdemeanor - Effective 12/1/97)*
H	G.S. 14-309(a)	Violation made criminal (video gaming machines - third offense).
H	G.S. 14-315(a1)	Selling or giving weapons to minors. *(Was Class I - Effective 1/1/97)*
H	G.S. 14-329(a)	Manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages.
H	G.S. 14-362.2	Dog fighting and baiting.
H	G.S. 14-367	Altering the brands of and misbranding another's livestock (Larceny).
H	G.S. 14-398	Theft or destruction of property of public libraries, museums, etc. worth more than $50.
H	G.S. 14-401.11(b)(1)b	Distribution of certain food at Halloween and all other times prohibited (greater than mild physical discomfort without any lasting effect).
H	G.S. 14-401.15	Telephone sales recovery services (if any money/other consideration is collected).
H	G.S. 14-401.16(a)	Contaminate food or drink to render one mentally incapacitated or physically helpless.

Felony Classification Continued

H	G.S. 14-401.16(b)	Contaminate food or drink to render one mentally incapacitated or physically helpless (unlawful to manufacture controlled substance for the purpose of violating this section).
H	G.S. 14-415.3	Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited.
H	G.S. 14-454.1(b)	Accessing government computers.
H	G.S. 14-456.1	Denial of government computer services to an authorized user.
H	G.S. 14-457	Extortion (maliciously threatens to commit an act described in G.S. 14-455).
H	G.S. 15A-287(a)	Interception and disclosure of wire, oral, or electronic communications prohibited.
H	G.S. 15A-288	Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.
H	G.S. 20-52.1(d)	Manufacturer's certificate of transfer of new motor vehicle.
H	G.S. 20-58(b)	Perfection by indication of security interest on certificate of title.
H	G.S. 20-72(b)	Transfer by owner (filing false sworn certification as to unavailability of certificate of title).
H	G.S. 20-106	Receiving or transferring stolen vehicles.
H	G.S. 20-141.5	Speeding to elude arrest; forfeiture of vehicle (two or more aggravating factors present).
H	G.S. 20-166(a)	Duty to stop in event of accident or collision.
H	G.S. 48-10-102	Unlawful payments related to adoption (second offense).
H	G.S. 50B-4.1(f)	Violation of valid protective order (with three prior convictions under Chapter 50B).
H	G.S. 53-124	Examiner making false report.
H	G.S. 53-129	Misapplication of bank funds by officer or employee. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 53-130	Making false entries in banking accounts; misrepresenting assets and liabilities of banks.
H	G.S. 53-355	Certain criminal offenses (Trust companies).
H	G.S. 58-2-161	False statement to procure or deny benefit of insurance policy or certificate.
H	G.S. 58-2-162	Embezzlement by insurance agents, brokers, or administrators. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 58-30-12(c)	Duty to report insurer impairment; violations; penalties.
H	G.S. 58-50-40	Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions.
H	G.S. 58-58-265	Fraudulent viatical settlement acts, interference, and participation of convicted felons prohibited.

Felony Classification Continued

H	G.S. 58-89-30	Criminal penalty (Professional Employer Organization Act).
H	G.S. 62-273	Embezzlement of C.O.D. shipments.
H	G.S. 63-25	Taking of aircraft made crime of larceny (intent to deprive).
H	G.S. 70-40	Penalties (knowingly acquire human skeletal remains removed from unmarked burials in North Carolina).
H	G.S. 75-1	Combinations in restraint of trade illegal.
H	G.S. 78A-57	Criminal penalties (fraud under Securities Act).
H	G.S. 78C-39	Criminal penalties (fraudulent practices of investment advisors).
H	G.S. 80-11.1(b)	Criminal use of counterfeit trademark (value more than $10,000).
H	G.S. 80-11.1(c)	Criminal use of counterfeit trademark device.
H	G.S. 90-95(b)(1)	Manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I or II Controlled Substance.
H	G.S. 90-95(b)(2)	Sale of a Schedule III, IV, V or VI Controlled Substance. *(Was Class I - Effective 12/1/97)*
H	G.S. 90-95(d1)(1)	Possess an immediate precursor chemical with intent to manufacture a controlled substance.
H	G.S. 90-95(d1)(2)	Possess or distribute an immediate precursor chemical knowing it will be used to manufacture a controlled substance.
H	G.S. 90-95(e)(9)	Possession of a controlled substance on the premises of a penal institution or local confinement facility. *(Was Class I - Effective 12/1/97)*
H	G.S. 90-95(h)(1)a	Trafficking in marijuana (more than 10 pounds, less than 50 pounds).
H	G.S. 90-210.70(a)	Embezzlement of funeral funds, penalties. *(Amount involved less than $100,000 - Effective 12/1/97)*
H	G.S. 97-88.2(a)	Penalty for fraud (obtain/deny workers' compensation).
H	G.S. 97-88.2(c)	Penalty for fraud (agree to accept/forgo workers' compensation). *(Was Class 1 misdemeanor - Effective 10/1/97)*
H	G.S. 97-94(c)	Employers required to give proof . . . criminal penalties for failure to secure payment of compensation (employer willfully fails to secure compensation).
H	G.S. 97-94(d)	Employers required to give proof . . . criminal penalties for failure to secure payment of compensation (person with authority willfully fails to bring the employer in compliance).
H	G.S. 105-236(7)	Penalties (attempt to evade or defeat tax). *(Was Class I - Effective 12/1/98)*
H	G.S. 105-236(9a)c	Penalties (aid or assist in filing fraudulent returns). *(Was Class I - Effective 12/1/98)*
H	G.S. 106-145.6	Denial, revocation, and suspension of license; penalties for violations.
H	G.S. 106-363	Damaging dipping vats a felony.
H	G.S. 106-763.1	Propagation and production of American alligators (possession of untagged/undocumented alligator).
H	G.S. 108A-53.1(a)	Illegal purchase or sale of food stamps.

Felony Classification Continued

H	G.S. 108A-53.1(b)	Illegal use or transfer of food stamps (value equals or exceeds $1000).
H	G.S. 108A-60	Protection of patient property (Medical Assistance Program; willfully embezzle, convert, appropriate).
H	G.S. 133-24	Government contracts; violations of G.S. 75-1 and 75-2.
H	G.S. 133-25	Conviction; punishment (violation of 133-24).
H	G.S. 136-13	Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.
H	G.S. 136-13.2	Falsifying highway inspection reports.
H	G.S. 136-14(a)-(d)	Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position. *(Was Class I - Effective 12/1/98)*
H	G.S. 136-14(e)	Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.
H	G.S. 136-14(g)	Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.
H	G.S. 143-215.88B(e)	Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control).
H	G.S. 143-215.114B(g)	Enforcement procedures: criminal penalties (Air pollution control).
H	G.S. 148-45(b)	Escaping or attempting escape from state prison system. *(Was Class I - Effective 12/1/97)*
H	G.S. 148-46.1	Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform. *(Was Class I - Effective 12/1/97)*
I	G.S. 7A-456(a)	False statements to the question of indigency.
I	G.S. 10A-12(c)	Notary taking acknowledgment or performing verification knowing it is false or fraudulent.
I	G.S. 14-3(c)	Class 1 misdemeanor offense committed because of the victim's race, color, religion, nationality, or country of origin.
I	G.S. 14-12.12(b), -12.15	Placing burning/flaming cross on property of another or on public street or highway.
I	G.S. 14-12.13,-12.15	Placing exhibit with intention of intimidating, etc., another.
I	G.S. 14-12.14,-12.15	Placing exhibit while wearing mask, hood, or other disguise.
I	G.S. 14-13	Counterfeiting coin and uttering coin that is counterfeit.
I	G.S. 14-14	Possessing tools for counterfeiting.
I	G.S. 14-16.6(a)	Assault on executive, legislative, or court officer. *(Court officer - Effective 12/1/99)*
I	G.S. 14-16.7(a)	Threats against executive, legislative, or court officers. *(Court officer - Effective 12/1/99)*

Felony Classification Continued

I	G.S. 14-16.7(b)	Threats against executive, legislative, or court officers by mail. *(Court officer - Effective 12/1/99)*
I	G.S. 14-32.3(b)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
I	G.S. 14-34.6(b)	Assault or affray on an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.
I	G.S. 14-45	Using drugs or instruments to produce miscarriage or injure pregnant woman.
I	G.S. 14-46	Concealing birth of child.
I	G.S. 14-55	Preparation to commit burglary or other housebreakings.
I	G.S. 14-56	Breaking or entering into/out of railroad cars, motor vehicles, trailers, etc.
I	G.S. 14-56.1	Breaking into or forcibly opening coin- or currency-operated machines.
I	G.S. 14-56.3	Breaking into paper currency machines.
I	G.S. 14-69.1(b)	Making a false report concerning destructive device.
I	G.S. 14-69.2(b)	Perpetrating hoax by use of false bomb or other device.
I	G.S. 14-81(a1)	Larceny of dogs.
I	G.S. 14-89.1	Safecracking.
I	G.S. 14-107	Worthless checks (amount more than $2,000).
I	G.S. 14-113.9.-113.17(b)	Financial transaction card theft.
I	G.S. 14-113.11, -113.17(b)	Forgery of financial transaction card.
I	G.S. 14-113.13(a), (b), -113.17(b)	Financial transaction card fraud, value over $500.
I	G.S. 14-113.14, -113.17(b)	Criminal possession of financial transaction card forgery devices.
I	G.S. 14-113.15, -113.17(b)	Criminal receipt of goods and services fraudulently obtained worth more than $500.00.
I	G.S. 14-113.15A, -113.17(b)	Criminal factoring of financial transaction card records.
I	G.S. 14-119(a)	Forgery of notes, checks, and other securities; counterfeiting of instruments.
I	G.S. 14-120	Uttering forged paper or instrument containing a forged endorsement.
I	G.S. 14-123	Forging names to petitions and uttering forged petitions.
I	G.S. 14-124	Forging certificate of corporate stock and uttering forged certificates.
I	G.S. 14-125	Forgery of bank notes and other instruments by connecting genuine parts.
I	G.S. 14-136	Intentionally setting fire to grass and brushlands and woodlands.
I	G.S. 14-141	Burning or otherwise destroying crops in the field, damage over $2,000.
I	G.S. 14-149	Desecrating, plowing over or covering up graves.
I	G.S. 14-159.2(c)	Interference with animal research (if the animal released has an infectious disease).

Felony Classification Continued

I	G.S. 14-163	Poisoning livestock.
I	G.S. 14-163.1	Assaulting a law enforcement agency animal or an assistance animal (causing serious physical harm).
I	G.S. 14-177	Crime against nature.
I	G.S. 14-183	Bigamy.
I	G.S. 14-190.1	Obscene literature and exhibitions.
I	G.S. 14-190.6	Employing or permitting minor to assist in obscenity offense.
I	G.S. 14-190.7	Dissemination to minors under the age of 16 years.
I	G.S. 14-190.8	Dissemination to minors under the age of 13 years.
I	G.S. 14-190.17A	3rd degree sexual exploitation of a minor.
I	G.S. 14-202.3	Solicitation of a child by computer to commit an unlawful sex act.
I	G.S. 14-202.4	Taking indecent liberties with a student (at least 4 years older than the victim).
I	G.S. 14-210	Subornation of perjury.
I	G.S. 14-211	Perjury before legislative committees.
I	G.S. 14-221.1	Altering, destroying, or stealing evidence of criminal conduct.
I	G.S. 14-225.2(a)(2)	Harassment of and communication with jurors.
I	G.S. 14-228	Buying and selling offices.
I	G.S. 14-233	Making of false report by bank examiners; Accepting bribes.
I	G.S. 14-253	Failure of certain railroad officers to account with successors.
I	G.S. 14-259	Harboring or aiding certain persons charged or convicted of a felony.
I	G.S. 14-269	Carrying concealed weapons (pistol or gun) (second or subsequent offense).
I	G.S. 14-269.2(b)	Possess firearm on educational property or to a curricular or extracurricular activity sponsored by a school. *(curricular/extracurricular activity added effective 12/1/99)*
I	G.S. 14-269.2(c)	Aid minor to possess firearm on educational property or to a curricular or extracurricular activity sponsored by a school. *(curricular/extracurricular activity added effective 12/1/99)*
I	G.S. 14-277(a)(4)	Impersonation of a law-enforcement or other public officer.
I	G.S. 14-277.4	Obstruction of health care facilities (third conviction within three years).
I	G.S. 14-278	Willful injury to property of railroads.
I	G.S. 14-280	Shooting or throwing at trains or passengers.
I	G.S. 14-282	Displaying false lights on seashore.
I	G.S. 14-309(a)	Violation made criminal (video gaming machines - second offense).
I	G.S. 14-309.5(b)	Bingo.
I	G.S. 14-309.14	Beach bingo (with a prize of $50.00 or greater).
I	G.S. 14-320.1	Transporting child outside the state with intent to violate custody order.

Felony Classification Continued

I	G.S. 14-322.1	Abandonment of child or children for six months.
I	G.S. 14-360(b)	Cruelty to animals (maliciously torturing).
I	G.S. 14-362.1(d)	Animal fights, other than cock fights, and animal baiting (second offense).
I	G.S. 14-373	Bribery of players, managers, coaches, referees, umpires, or officials.
I	G.S. 14-374	Acceptance of bribes by players, managers, coaches, referees, umpires, or officials.
I	G.S. 14-377	Intentional losing of athletic contest or limiting margin of victory or defeat.
I	G.S. 14-399(e)	Littering in an amount exceeding 500 pounds or 100 cubic feet for commercial purposes.
I	G.S. 14-401.11(b)(1)a	Distribution of certain food at Halloween and all other times prohibited (limited to mild physical discomfort without any lasting effect).
I	G.S. 14-401.20	Defraud drug and alcohol screening tests; penalty (second offense).
I	G.S. 14-409.9	Machine guns and other like weapons.
I	G.S. 14-433,-437(a)(1)	Recording of live concerts or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances (at least 1000 unauth. sound recordings or 100 unauth. audio-visual recordings; second offense).
I	G.S. 14-434,-437(a)(1)	Retailing, etc., of certain recorded devices unlawful (1000 unauth. sound recordings/100 unauth. audio visual recordings; second offense).
I	G.S. 14-435,-437(a)(1)	Recorded devices to show true name and address of manufacturer (1000 unauth. sound recordings/100 unauth. audio visual recordings; second offense).
I	G.S. 14-458	Computer trespass; penalty (damage valued at $2,500 or more).
I	G.S. 15A-543(b)	Failure to appear (if released in connection with a felony charge or conviction).
I	G.S. 15B-7	Filing of false application for compensation award (more than $400.00).
I	G.S. 18B-102.1	Direct shipments from out-of-state prohibited (alcohol). *(Effective 12/1/97)*
I	G.S. 18B-307(c)	Unlawful manufacturing of alcoholic beverage (second offense).
I	G.S. 20-30(7)	Violations of License or Learner's Permit provisions (sell reproductions).
I	G.S. 20-30(9)	Violations of License or Learner's Permit provisions (use drivers license or learner's permit with false name in the commission of a felony).
I	G.S. 20-31	Making false affidavits perjury (Uniform Driver's License Act).
I	G.S. 20-34.1	Unlawful to issue licenses for anything of value except prescribed fees.
I	G.S. 20-37.8	Fraudulent use prohibited (use special identification card with false name in commission of a felony).
I	G.S. 20-71	Altering or forging certificate of title, registration card or application.
I	G.S. 20-106.1	Fraud in connection with rental of motor vehicles.
I	G.S. 20-106.2(d)	Sublease and loan assumption arranging regulated.
I	G.S. 20-109(a)	Altering or changing engine or other numbers (wilful).
I	G.S. 20-109(b)	Altering or changing engine or other numbers (intent to conceal).

Felony Classification Continued

I	G.S. 20-112	Making false affidavit perjury (Anti-theft Provisions, Motor Vehicle Act of 1937).
I	G.S. 20-136	Smoke screens.
I	G.S. 20-177	Penalty for felony (Motor Vehicle Act of 1937).
I	G.S. 20-183.8(c)	Forging a motor vehicle inspection sticker.
I	G.S. 20-279.31(c1)	Making false affidavit perjury (Motor Vehicle Safety and Financial Responsibility Act of 1953).
I	G.S. 20-343, -350	Unlawful change of mileage.
I	G.S. 20-350	Criminal offense (unlawful change of mileage).
I	G.S. 21-42	Issuing false bills or violating Chapter made felony.
I	G.S. 23-43	False taking of debtor's oath.
I	G.S. 53-131	False certification of a check.
I	G.S. 53-132	Receiving deposits in insolvent banks.
I	G.S. 53-243.14	License required; licensee records.
I	G.S. 53-287	Criminal penalties (violation of check cashing article).
I	G.S. 58-2-180	Punishment for making false statement in financial or other statement.
I	G.S. 58-7-50	Maintenance and removal of records and assets.
I	G.S. 58-8-1	Mutual insurance companies organized; requisites for doing business (false oath in respect to certificate).
I	G.S. 58-19-50	Sanctions (Insurance holding companies).
I	G.S. 58-24-180(d)	Violating 58-24-65: Consolidations and mergers of fraternal benefit societies.
I	G.S. 58-24-180(e)	False statement under oath in any verified report/declaration required by law from fraternal benefit societies, perjury.
I	G.S. 58-70-1	Permit from Commissioner of Insurance; penalty for violation; exception.
I	G.S. 58-71-95(5)	Prohibited practices (bail bondsman fails to return collateral security worth $1,500 or more).
I	G.S. 58-71-165	Monthly report required.
I	G.S. 63-27	Operation of aircraft while impaired (second conviction).
I	G.S. 65-71	Penalties (Cemeteries).
I	G.S. 66-58.8	Criminal penalty (Electronic Commerce in Government).
I	G.S. 66-135	Bond and trust account required.
I	G.S. 66-225	Violations (Credit Repair Services Act).
I	G.S. 75-12	False swearing by person responding to investigation of trusts and monopolies.
I	G.S. 78A-57	Criminal penalties (Securities Act).
I	G.S. 78C-39	Criminal penalties (Investment Advisors).

Felony Classification Continued

I	G.S. 78C-78	Remedies for violation; criminal penalty (athlete agents).
I	G.S. 78D-24	Criminal penalties (Commodities).
I	G.S. 80-11.1(b)	Criminal use of counterfeit trademark (value of more than $3,000 up to $10,000).
I	G.S. 90-95(b)(2)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance.
I	G.S. 90-95(c)	Create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance.
I	G.S. 90-95(d)(1)	Possession of a Schedule I Controlled Substance.
I	G.S. 90-95(d)(2)	Possession of more than four dosage units of Hydromorphone.
I	G.S. 90-95(d)(2)	Possession of more than 100 dosage units of any controlled substance.
I	G.S. 90-95(d)(2)	Possession of any amount of Methamphetamine, Amphetamine, Cocaine or Phencyclidine or derivative thereof. *(Methamphetamine and Amphetamine - Effective 12/1/99)*
I	G.S. 90-95(d)(4)	Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish.
I	G.S. 90-95(e)(3)	Drug offense punishable by not more than two years and offender has been previously convicted of a drug offense.
I	G.S. 90-108	Prohibited acts; penalties (Controlled Substance Act).
I	G.S. 90-113.23(c)	Manufacture or delivery of drug paraphernalia (from person over 18 to person under 18).
I	G.S. 93A-40	Registration required of time share projects; real estate salesmen license required.
I	G.S. 93A-58	Registrar required; criminal penalties; project broker (real estate development).
I	G.S. 95-197	Withholding hazardous substance trade secret information.
I	G.S. 106-350	Sale of tubercular animal a felony.
I	G.S. 106-443	Issuance of false receipt a felony; punishment.
I	G.S. 106-549.26	Inspection of establishment; bribery of or malfeasance of inspector.
I	G.S. 108A-39(b)	Fraudulent misrepresentation (AFDC in amount of more than $400.00).
I	G.S. 108A-53(a)	Fraudulent misrepresentation (Food Stamp Program in amount more than $400.00).
I	G.S. 108A-53.1(b)	Illegal use or transfer of food stamps (value is at least $500 but less than $1,000).
I	G.S. 108A-63(c)	Medical assistance provider fraud.
I	G.S. 108A-64(c)(1)	Medical assistance recipient fraud (value of assistance is more than $400).
I	G.S. 108A-70.28	Fraudulent misrepresentation (Health Insurance Program for Children).
I	G.S. 110-107	Fraudulent misrepresentation (value of child care subsidy is more than $1,000).

Felony Classification Continued

I	G.S. 113-209	Taking polluted shellfish at night or with prior conviction forbidden; penalty.
I	G.S. 130A-26.1(f)	Criminal violation of Article 9 (transporting hazardous waste to a facility which does not have a permit).
I	G.S. 130A-26.1(g)	Criminal violation of Article 9 (handling hazardous waste without required documents).
I	G.S. 130A-26A(b)	Violations of Article 4 (Vital Records Law).
I	G.S. 130A-431	Certain vaccine diversions made felony.
I	G.S. 133-31	Perjury; punishment (Public works).
I	G.S. 136-14(f)	Members not eligible for other employment with Department; no sales to department by employees; members not to sell or trade property with Department; profiting from official position; misuse of confidential information by Board members.
I	G.S. 143-54	False certification that bids are submitted without collusion.
I	G.S. 143-59.1	Contracts with certain foreign vendors.
I	G.S. 143-59.2	Certain vendors prohibited from contracting with State.
I	G.S. 143-151(b)	Violation of Uniform Standards Code for Manufactured Homes. *(Was Class 1 misdemeanor - Effective 8/4/99)*
I	G.S. 143-215.6B(g)	Enforcement procedures: criminal penalties (Pollution control).
I	G.S. 143-215.88B(h)	Enforcement procedures: criminal penalties (false statement/ tampering with recording device under hazardous waste article).
I	G.S. 143-215.104Q(b)	Enforcement procedures; criminal penalties (dry-cleaning solvents; knowing and willful violation).
I	G.S. 143B-472.61	Certification that information technology bids were submitted without collusion.
I	G.S. 147-33.96	Certification that information technology bid submitted without collusion.
I	G.S. 157-29.1	Fraudulent misrepresentation (Housing Assistance for more than $400).
I	G.S. 163-72.4(f)	Registration by mail (willfully giving false information).
I	G.S. 163-81	Driver license examiners to accept applications to register voters (willfully giving false information).
I	G.S. 163-90.3	Making false affidavit perjury (Elections).
I	G.S. 163-226.3	Certain acts declared felonies (Elections).
I	G.S. 163-237(c)	Forgery of signature on absentee ballot.
I	G.S. 163-275	Certain acts declared felonies (Elections).
I	G.S. 163-278.53	Criminal punishment (Elections).
One class higher than the felony committed	G.S. 14-18.2(b)	Injury to pregnant woman (while committing a felony).

One class higher than the principal felony	G.S. 50B-4.1(d)	Violation of valid protective order (committing a felony knowing that the behavior is prohibited by the order).
One class higher than the violation	G.S. 90-95.4(a)(1)	Employing or intentionally using minor to commit a drug law violation (Offender was 18 to 21, minor was more than 13).
Two classes higher than the violation	G.S. 90-95.4(a)(2)	Employing or intentionally using minor to commit a drug law violation (Offender was 18 to 21, minor was 13 or younger). *(Was one class higher - Effective 1/1/99)*
Three classes higher than the violation	G.S. 90-95.4(b)(1)	Employing or intentionally using minor to commit a drug law violation (Offender was 21 or older, minor was more than 13). *(Was two classes higher - Effective 1/1/99)*
Four classes higher than the violation	G.S. 90-95.4(b)(2)	Employing or intentionally using minor to commit a drug law violation (Offender was 21 or older, minor was 13 or younger). *(Was two classes higher - Effective 1/1/99)*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 785*

Short Title:	ATV Use for Emergencies.-AB	(Public)
Sponsors:	Senators Kerr and Purcell.	
Referred to:	Judiciary II (Criminal).	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS, MUNICIPAL EMPLOYEES, AND FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-114.4. Motorized all-terrain vehicles of law enforcement officers, municipal employees, and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers enforcing the laws of the State and municipal employees may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the governmental agency, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers and municipal employees may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less. As used in this subsection, the term "municipal employee" includes employees of a county.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, on public highways where the speed limit is 35 miles per hour or less and may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) Part 10C of Article 3 of this Chapter and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section."

SECTION 2. S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, and Section 36(b) of S.L. 2006-264 are repealed.

SECTION 3. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance."

SECTION 4. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1359

Short Title:	Red Light Exception for Motorcycles.	(Public)
Sponsors:	Senators Allran; and Goodall.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXCEPTION TO G.S. 20-158 RELATING TO MOTORCYCLES AND TRAFFIC-CONTROL SIGNALS ACTIVATED BY VEHICLE DETECTION DEVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"(e) The driver of a motorcycle approaching an intersection that is controlled by a triggered traffic-control signal using a vehicle detection device that is inoperative due to the size of the motorcycle, shall come to a full and complete stop at the intersection. If the signal fails to operate after one cycle of the traffic signal, the driver may proceed after exercising due caution and care to determine that no motor vehicle or person is approaching on the street or highway to be crossed or entered or is so far away from the intersection that it does not constitute an immediate hazard. It is not a defense to a violation of this section that the driver of a motorcycle proceeded under the belief that a traffic-control signal used a vehicle detection device or was inoperative due to the size of the motorcycle when the signal did not in fact use a vehicle detection device or the device was not in fact inoperative due to the size of the motorcycle."

SECTION 2. This act becomes effective September 1, 2007, and applies to violations occurring on or after that date.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 19, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 880	Bail Bonds/Amend Forfeiture Requirement.	Senator Berger
SB 881	Clarify Residency Requirements/Bail Bondsmen.	Senator Berger
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, April 19, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 880	Bail Bonds/Amend Forfeiture Requirement.	Senator Berger
SB 881	Clarify Residency Requirements/Bail Bondsmen.	Senator Berger
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 19. 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 19, 2007, with fifteen members present. Senator Hartsell welcomed pages Lizzie and Brittany McMahan, twins, and Ivy Jump and thanked them for their service.

SB 1359 (Red Light Exception for Motorcycles.) Senator Hartsell asked for a motion to adopt the Proposed Committee Substitute for purposes of discussion. Senator Snow so moved, all voted and the motion carried. Senator Allran was recognized to explain the bill. Mr. Thomas Wasileski, representing the North Carolina Concerned Bikers Association, spoke in favor of the bill. Ms. Joanna Reese, representing the Department of Motor Vehicles, commented that the department had no objection to the bill. Senator Snow moved for a favorable report to the committee substitute, unfavorable to the original bill, all voted and the motion carried.

SB 880 (Bail Bonds/Amend Forfeiture Requirement.) Senator Hartsell called for a motion to adopt the Proposed Committee Substitute for purposes of discussion. Senator Dorsett so moved, all voted and motion carried. Senator Berger was recognized to explain the bill. Ms. Leanne Winner, representing the Council of School Attorneys and Mr. Rod Malone, Attorney, spoke in opposition of the bill. As Senator Hartsell needed to leave the committee meeting, Senator Jones, Vice Chairman, presided. Senator Snow moved for a favorable report. Mr. Mike Mann and Mr. Tony Woods, representing the Bail Bondsmen, spoke in favor of the bill. There was much discussion and Senator Jones decided to hold the bill over for a later time.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry, Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 19, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	BBA
T.J. Wasilewski	Concerned Bikers
[illegible]	S&T
Mark Black	NCBAA
Leanne Winner	NCSBA
Rod Malone	NCCOSA
Yolanda Smith	Tharrington Smith, LLP
Johanna Reese	DOT
John McKay	Gov Office
Christine Wunsche	106 - Daily Bulletin
Bill O'Donnell	NCSBA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 18, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Buffkin	Nelson Mullins
Cassandra White	Gov. Office
Erin Kinney	NC Conservation Network
Paul Fulton	NCATL
Walter Council	NC SA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 880

Short Title:	Bail Bonds/Amend Forfeiture Requirement.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BOND FORFEITURE SHALL BE SET ASIDE IF THE DEFENDANT FAILED TO APPEAR BECAUSE THE DEFENDANT WAS INCARCERATED ANYWHERE IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(b)(6) reads as rewritten:

"(6) The defendant was incarcerated ~~in a unit of the Department of Correction and is~~ anywhere serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the ~~State~~ United States at the time of the failure to appear."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 880
PROPOSED COMMITTEE SUBSTITUTE S880-CSRC-15 [v.3]

4/18/2007 11:35:52 PM

Short Title: Bail Bonds/Amend Forfeiture Requirement. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BOND FORFEITURE SHALL BE SET ASIDE IF THE DEFENDANT FAILED TO APPEAR BECAUSE THE DEFENDANT WAS INCARCERATED ANYWHERE IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(b)(6) reads as rewritten:

"(6) The defendant was incarcerated in a ~~unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons~~ local, state, or federal dentention center, jail or prison located anywhere within the borders of the ~~State~~ United States at the time of the failure to appear."

SECTION 2. This act becomes effective July 1, 2007.

SENATE BILL 880:
Bail Bonds/Amend Forfeiture Requirement

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 19, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S880-CSRC-15		

SUMMARY: ***Senate Bill 880 provides that the forfeiture of a bail bond shall be set aside if the defendant is incarcerated anywhere in the United States on the day the defendant was required to appear in court and failed to do so.***

The PCS removes language in the 1st Edition that would have required that the defendant be serving a sentence at the time of incarceration.

The act would become effective July 1, 2007.

CURRENT LAW: G.S. 15A-544.5 sets out 6 grounds for setting aside the forfeiture of a bail bond. These include situations where the defendant's failure to appear has been set aside by the court, the charges have been finally disposed by the court, the defendant was surrendered to the court by the surety, the defendant died within the period of the forfeiture, or the defendant was incarcerated in North Carolina in a State prison or is serving a sentence in a unit of the Federal Bureau of Prisons in North Carolina. In cases where the State proves that the surety had notice or actual knowledge before executing the bond that the defendant had already failed to appear on two or more occasions for the same offense, the forfeiture of the bond may not be set aside for any reason.

BILL ANALYSIS: The Proposed Committee Substitute for S880 provides that if, at the time the defendant was supposed to appear before the court, the defendant was incarcerated in any type of prison or jail for any reason anywhere within the borders of the United States, then the court shall set aside the bond forfeiture that will have occurred as a result of the defendant's failure to appear.

The PCS broadens the scope of the existing law in that the bond forfeiture would be set aside if the defendant is incarcerated under any in any of the following additional conditions:

- The defendant is incarcerated in a prison or jail or federal detention center in another state;
- The defendant is incarcerated in a jail in North Carolina; or
- The defendant is incarcerated anywhere, in any type of jail or prison, but not actually serving a sentence.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 881

Short Title:	Clarify Residency Requirements/Bail Bondsmen.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RESIDENCY REQUIREMENTS FOR LICENSURE UNDER THE LAWS PERTAINING TO BAIL BONDSMEN AND RUNNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-50(b)(2) reads as rewritten:

"(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

...

(2) ~~Be a resident of this State.~~Submit proof of residency in this State to the Commissioner at least six consecutive months before applying to be licensed as a bail bondsmen or runner in this State. As proof of residency, the applicant must submit a valid North Carolina drivers license and present at least two of the following types of documentation:

a. A pay stub with the payee's address.

b. A utility bill showing the address of the applicant-payor.

c. A contract for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.

d. A receipt for personal property taxes paid.

e. A receipt for real property taxes paid to a North Carolina locality.

f. A current automobile insurance policy issued to the applicant and showing the applicant's address.

g. A monthly or quarterly financial statement from a North Carolina regulated financial institution.

The Commissioner, at the Commissioner's discretion, may require the applicant to submit more than two types of documentation as proof of residency.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1359

Short Title:	Red Light Exception for Motorcycles.	(Public)
Sponsors:	Senators Allran; and Goodall.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXCEPTION TO G.S. 20-158 RELATING TO MOTORCYCLES AND TRAFFIC-CONTROL SIGNALS ACTIVATED BY VEHICLE DETECTION DEVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"(e) The driver of a motorcycle approaching an intersection that is controlled by a triggered traffic-control signal using a vehicle detection device that is inoperative due to the size of the motorcycle, shall come to a full and complete stop at the intersection. If the signal fails to operate after one cycle of the traffic signal, the driver may proceed after exercising due caution and care to determine that no motor vehicle or person is approaching on the street or highway to be crossed or entered or is so far away from the intersection that it does not constitute an immediate hazard. It is not a defense to a violation of this section that the driver of a motorcycle proceeded under the belief that a traffic-control signal used a vehicle detection device or was inoperative due to the size of the motorcycle when the signal did not in fact use a vehicle detection device or the device was not in fact inoperative due to the size of the motorcycle."

SECTION 2. This act becomes effective September 1, 2007, and applies to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 881
PROPOSED COMMITTEE SUBSTITUTE S881-CSRC-17 [v.1]

4/18/2007 11:28:44 PM

Short Title: Define Residency Requirements/Bail Bondsmen. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO DEFINE THE RESIDENCY REQUIREMENTS FOR LICENSURE UNDER THE LAWS PERTAINING TO BAIL BONDSMEN AND RUNNERS AND TO MAKE OTHER STYLISTIC CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

~~The following words when used in this Article shall have the following meanings:~~ The following definitions apply in this Article:

(1) ~~"Accommodation bondsman" is a~~ Accommodation bondsman. – A person who shall not charge a fee or receive any consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that the real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized if there is a breach of the conditions of the bond. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety as long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of the bail bond.

(2) ~~"Bail bond" shall mean an~~ Bail bond. – An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an

appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) ~~"Bail bondsman" shall mean a~~ Bail bondsman. – A surety bondsman, professional bondsman or an accommodation bondsman as ~~hereinafter defined.~~ defined in this section.

(4) ~~"Commissioner" shall mean the~~ Commissioner. – The North Carolina Commissioner of Insurance.

(4a) ~~"First-year licensee" means any~~ First-year licensee. – Any person who has been licensed as a bail bondsman or runner under this Article and who has held the license for a period of less than 12 months.

(5) ~~"Insurer" shall mean any~~ Insurer. – Any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(6) ~~"Obligor" shall mean a~~ Obligor. – A principal or a surety on a bail bond.

(7) ~~"Principal" shall mean a~~ Principal. – A defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) ~~"Professional bondsman" shall mean any~~ Professional bondsman. – Any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and who receives or is promised money or other things of value ~~therefor.~~ in exchange for writing the bail bonds.

(8a) Resident. - A person who lives in this State for at least six consecutive months prior to applying for a license under this Article.

(9) ~~"Runner" shall mean a~~ Runner. – A person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, ~~or to assist~~ assisting in the apprehension and surrender of defendant to the court, ~~or~~ keeping the defendant under necessary surveillance, or ~~to execute~~ executing bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not ~~include, however,~~ include a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(9a) ~~"Supervising bail bondsman" means any~~ Supervising bail bondsman. – Any person licensed by the Commissioner as a professional bondsman or surety bondsman who employs or contracts with any new licensee under this Article.

(10) ~~"Surety" shall mean one~~ Surety. – One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) ~~"Surety bondsman" means any~~ Surety bondsman – Any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and who receives or is promised consideration for doing so."

SECTION 2. G.S. 58-71-50(b) reads as rewritten:

"(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

(1) Be 18 years of age or over.
(2) Be a resident of this State.
(3) Repealed by Session Laws 1998-211, s. 23.
(4) Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
(5) Have no outstanding bail bond obligations.
(6) Have no current or prior violations of any provision of this Article or of Article 26 of Chapter 15A of the General Statutes or of any similar provision of law of any other state.
(7) Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business.
(8) Hold a valid and current North Carolina drivers license."

SECTION 3. G.S. 58-71-50 is amended by adding a new subsection to read:

"(c) An applicant for a license as a bail bondman or runner shall provide to the Commissioner at least two of the following documents as proof of residency in this State:

(1) A pay stub showing the applicant's residential address in this State.
(2) A utility bill showing the applicant's residential address in this State.
(3) A written lease agreement or contract for purchase and sale signed by the applicant and for a residence located in this State.
(4) A receipt for personal property taxes paid by the applicant to a North Carolina unit of local government.
(5) A receipt for real property taxes paid by the applicant to a North Carolina unit of local government.
(6) A monthly or quarterly statement showing the applicant's residential address in this State and issued by a financial institution for an account held by the applicant.

Subject to rules adopted by the Commissioner, an applicant may be required to provide additional documentation as proof of residency in this state."

SECTION 4. This act becomes effective October 1, 2007, and applies to applications for licensure made on or after that date.

SENATE BILL 881:
Define Residency Requirements/Bail Bondsmen

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 19, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S881-CSRC-17		

SUMMARY: ***Senate Bill 881 would provide a definition for the existing residency requirement to become licensed as a bail bondsman or runner. It would require that an applicant provide at least two forms of documentation as proof of residency. It would also require the applicant to have a current and valid North Carolina driver's license.***

The Proposed Committee Substitute makes mostly organizational and stylistic changes in that it places the definition of "resident" in the definitions section of Article 71 of Chapter 58 and separates the drivers license requirement from the requirement that the applicant provide documentation as proof of residence. It also requires that the Commissioner adopt rules regarding when an applicant must provide more than two forms of documentation as proof of residency.

The act would become effective October 1, 2007, and apply to applications for licensure made on or after that date.

CURRENT LAW: Article 71 of Chapter 58 governs the licensure and regulation of bail bondsmen and runners. The Commissioner of Insurance is charged with administering the Article, including adopting rules, enforcing sanctions, and renewing, suspending or revoking licenses.

In order to be eligible to become a bail bondsman or runner, the applicant must provide a set of fingerprints and the Commissioner must request that the State Bureau of Investigation run a criminal background check. The SBI may forward the fingerprints to the Federal Bureau of Investigation for a national criminal background check.

An applicant must meet the following minimum qualifications:

- Be 18 years of age or older.
- Be a resident of this State.
- Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
- Have no outstanding bail bond obligations.
- Have no current or prior violations of any State law regarding bail bondsmen or runners or of any similar provision of law of any other state.
- Not otherwise be disqualified under the laws of North Carolina or any other state to engage in the bail bond business.

Article 71 does not provide any criteria for what constitutes being a "resident".

BILL ANALYSIS:

Section 1 amends the definitions section of Article 71 of Chapter 58 by defining "resident" as a person who has lived in North Carolina for at least six consecutive months prior to applying for a license. It

also makes stylistic changes to existing definitions so the section conforms to current drafting conventions.

Section 2 amends G.S. 58-71-50(b) regarding the requirements for licensure by adding the requirement that an applicant hold a current and valid North Carolina drivers license.

Section 3 adds a new subsection to G.S. 58-71-50 that requires an applicant provide at least 2 documents as proof of residency. The types of documents that may be used are:

- A pay stub showing the applicant's residential address in this State.
- A utility bill showing the applicant's residential address in this State.
- A written lease agreement or contract for purchase and sale signed by the applicant and for a residence located in this State.
- A receipt for personal property taxes paid by the applicant to a North Carolina unit of local government.
- A receipt for real property taxes paid by the applicant to a North Carolina unit of local government.
- A monthly or quarterly statement showing the applicant's residential address in this State and issued by a financial institution for an account held by the applicant.

An applicant could be required to submit additional documentation subject to rules adopted by the Commissioner.

EFFECTIVE DATE: The act would become effective October 1, 2007 and apply to applications made on or after that date.

S0881e1-SMRC-CSRC-17

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1359
PROPOSED COMMITTEE SUBSTITUTE S1359-CSRV-6 [v.1]

4/4/2007 1:57:00 PM

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1359:
Red Light Exception for Motorcycles

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 19, 2007
Introduced by:	Sen. Allran	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S1359-CSRV-6		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1359 would provide an affirmative defense to motorcycle operators who violate the statutory prohibition against entering an intersection when facing a red light if the motorcycle operator shows all of the following: (i) the operator came to a complete stop at the red light; (ii) the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal, and the inductive loop was not activated by the motorcycle; (iii) no other vehicles were at the intersection; (iv) no pedestrians were attempting to cross at or near the intersection; (v) at least one full traffic signal had occurred or a minimum of three minutes had elapsed prior to the motorcycle entering the intersection.***

CURRENT LAW: Under current law, vehicles facing a red light must stop and are prohibited from entering the intersection while the light is red (other than to make a lawful right turn). Running a red light is an infraction punishable by a fine of not more than $100.00 (G.S. 20-176). The Division of Motor Vehicles assigns three points to a person's record for running a red light (G.S. 20-16).

BILL ANALYSIS: The PCS would provide a motorcycle operator who violates the statutory prohibition against entering an intersection when facing a red light an affirmative defense if the operator shows all of the following:

- the operator came to a complete stop at the red light;
- the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal, **and** the inductive loop was not activated by the motorcycle;
- no other vehicles were at the intersection;
- no pedestrians were attempting to cross at or near the intersection;
- at least one full traffic signal had occurred or a minimum of three minutes had elapsed prior to entering the intersection.

BACKGROUND: Actuated traffic signals alter their sequence based on demand, and are activated by vehicle detectors. With an actuated traffic signal, once a vehicle is detected by a sensor, the traffic signal will initiate a change in, or extension of, a traffic signal phase (e.g., change a red light to green). A common kind of vehicle detector used to govern actuated traffic signals is a **loop detector**. A loop detector works like a metal detector, it reacts to the presence of metal (or an electromagnetic field). The sensitivity of a loop detector varies due to a number of parameters. Depending on the sensitivity of a detector, the presence of a motorcycle may not trigger a change in the traffic signal.

Tennessee, Arkansas, Idaho, and Minnesota have enacted laws similar to the provisions of Senate Bill 1359.

Staff with the Department of Transportation indicate that the Department has a process in place so that a motorcyclist can let the Department know if their motorcycle is not detected by a signal with a loop detector. The Department has used higher performing loop detectors as a standard since 1993; however, there are still old loop detectors that may cause motorcyclists problems. In these cases motorcyclists can call or email the Department to have these loop detectors scheduled for replacement.

EFFECTIVE DATE: The PCS would become effective December 1, 2007, and apply to offenses committed on or after that date.

S1359e1-SMRI-CSRV-6

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 24, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 544	Cabarrus Hospital Charter.	Senator Hartsell
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 880	Bail Bonds/Amend Forfeiture Requirement.	Senator Berger
SB 881	Clarify Residency Requirements/Bail Bondsmen.	Senator Berger

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, April 24, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 544	Cabarrus Hospital Charter.	Senator Hartsell
SB 677	Expunge Nonviolent Felony/Youthful Offender.	Senator Berger
SB 880	Bail Bonds/Amend Forfeiture Requirement.	Senator Berger
SB 881	Clarify Residency Requirements/Bail Bondsmen.	Senator Berger

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 24, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 24, 2007, with fourteen members present. Senator Hartsell introduced pages Bruno Lobo and Rosana Andrade, both exchange students from Brazil, and Curran Blackwell, and thanked them for their service.

SB 677 (Expunge Nonviolent Felony/Youthful Offender.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Snow so moved, all voted and the motion carried. Senator Berger was recognized to further explain the bill. Questions from Senators Kerr and Allran were answered by Senator Berger. Mr. Eddie Caldwell, representing the North Carolina Sheriff's Association spoke in favor of the changes in the bill. Senator Snow moved for a favorable report, unfavorable to the original bill, with a referral to Finance. All voted and the motion carried.

SB 881 (Clarify Residency Requirements/Bail Bondsmen.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Dannelly so moved, all voted and the motion carried. Senator Berger was recognized to explain the bill. Senator Berger presented an amendment and moved that it be adopted. All voted and the motion carried. He then continued with the explanation. Mr. Michael Mann, representing the North Carolina Bail Agents Association, spoke on the bill. Senator Snow moved for a favorable report to the proposed committee substitute, as amended, unfavorable to the original bill and rolled into a new committee substitute. All voted and the motion carried.

SB 544 (Cabarrus Hospital Charter.) As this was Senator Hartsell's bill, Senator Berger presided. Senator Hartsell explained the bill. Senator Dannelly moved for a favorable report with a referral to Finance. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 24, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	DOC
	DOC
Wayne Yancey	Staff
Jo McCants	DOC
Jason Courneyer	NC Policy Watch
	Gov's Office
Leanne Winner	NCSBA
Bill O'Donnell	NCSBA
Katherine Joyce	NCASA
	WCPSS
	NCATL

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 24, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Michael [illegible]	Sen Jones office
Eddie Caldwell	NC Sheriffs' Assn.
Mike Mack	NCBA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, April 24, 2007

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

FAVORABLE

S.B. **544** Cabarrus Hospital Charter.

Sequential Referral:	None
Recommended Referral:	Finance

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

S.B. **947** Uniform Trust Code Changes.

Draft Number:	PCS 15068
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1359** Red Light Exception for Motorcycles.

Draft Number:	PCS 55429
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

CORRECTED COPY
Senate Bill 544 was referred to Finance

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, April 24, 2007

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

FAVORABLE

S.B. **544** Cabarrus Hospital Charter.

Sequential Referral:	None
Recommended Referral:	None

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

S.B. **947** Uniform Trust Code Changes.

Draft Number:	PCS 15068
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1359** Red Light Exception for Motorcycles.

Draft Number:	PCS 55429
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, April 25, 2007

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

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

S.B. **677** Expunge Nonviolent Felony/Youthful Offender.

Draft Number:	PCS 55432
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

S.B. **881** Clarify Residency Requirements/Bail Bondsmen.

Draft Number:	PCS 55430
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 544

Short Title:	Cabarrus Hospital Charter.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary ll (Criminal).	

March 7, 2007

A BILL TO BE ENTITLED

AN ACT TO RESTATE THE CHARTER OF CABARRUS MEMORIAL HOSPITAL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 307, Public-Local Laws of 1935, as amended by Chapter 421, Public-Local Laws of 1935, Chapter 45 of the Session Laws of 1951, Chapter 1154 of the 1977 Session Laws, Chapter 277 of the 1981 Session Laws, Chapter 947 of the Session Laws of 1987, Chapter 602 of the 1989 Session Laws, Chapter 982 of the 1989 Session Laws, S.L. 1998-204, and S.L. 2004-67, reads as rewritten:

"Section 1. That the Board of County Commissioners of Cabarrus County, North Carolina, by a majority vote of said Board, or upon the petition of two hundred voters of said county, shall, after thirty days notice at the courthouse door and publication in one or more newspapers in said county for thirty days, order an election to be held to determine the will of the people of said county whether there shall be issued and sold bonds to an amount not to exceed one hundred thousand dollars ($100,000), to bear interest at not exceeding six per cent per annum, and to be payable, both principal and interest, when and where they may decide, and to levy a tax of not exceeding two cents on the one hundred dollar valuation of property, the proceeds of sale of said bonds to be issued to be used in securing lands and erecting or altering buildings and equipping same to be used as a public hospital for said county, and said tax to be levied to pay the interest on said bonds, and to provide a sinking fund therefor to pay said bonds at maturity. The said Board of County Commissioners shall also levy a tax not to exceed two cents on the one hundred dollar valuation of property for the maintenance and upkeep of said hospital. If the majority of the qualified voters at said election shall vote in favor of the issuing of said bonds and the levying of said tax, then said bonds, or such part thereof as the said Board of County Commissioners may determine, shall be issued and sold by said Board. Said tax, or such part thereof as shall be required, shall be levied. The hospital so erected from the sale of said bonds in addition to other

hospitalization funds from other sources shall be known as the "Cabarrus Memorial Hospital."

"Sec. 2. That at said election, those voters favoring the issuing and sale of bonds and levying of the tax aforesaid shall vote a written or printed ballot, "For Cabarrus Memorial Hospital," and those opposed shall vote a written or printed ballot, "Against Cabarrus Memorial Hospital," and for said election, the County Commissioners shall order a new registration, such registration to be used only for said special election to be governed by the laws of the State, and for said election, the County Commissioners shall appoint registrars and judges of election, and fix a date for making returns of election, at which date, the County Commissioners shall meet and canvass the returns of said election, and declare and record the result of said election. If a majority of the qualified voters shall fail to approve the issuing of said bonds and the levy of said tax at the first election held as above provided, then the County Commissioners may order another election for the same purpose and in the same manner: Provided, said second election shall not be held in the same year as said first election.

"Sec. 3. If a majority of the qualified voters shall vote "For Cabarrus Memorial Hospital," at any election held under this Act, then the County Commissioners shall issue and sell bonds authorized by said election for not less than par, and shall pay over the proceeds arising therefrom to the Treasurer of Cabarrus County, who shall pay out the same under the orders of the executive committee of the hospital hereinafter provided for, said executive committee being authorized to use and expend said fund in the purchase of necessary site, which said site shall be central and convenient, and in the erection and equipment of the necessary building or buildings for said county hospital, and the taxes which may be levied and collected under this Act shall also be paid to the Treasurer of Cabarrus County, and by said Treasurer kept in two separate accounts, one of said accounts being the hospital interest and sinking fund, and the other account the hospital maintenance fund, and from said taxes the said Treasurer shall set apart to the hospital interest and sinking fund such part thereof as shall be required to pay interest on the bonds and to provide the necessary sinking fund for the payment of said bonds, and the said Treasurer is authorized to lend only upon satisfactory security, approved by the Local Government Commission, the accumulations of said sinking fund from time to time for the best interest obtainable, and until said sinking fund is required for the purpose of paying off the said bonds, and said Treasurer, out of said hospital interest and sinking fund, shall pay the interest on said bonds and the bonds at maturity, but the said Treasurer shall not be required to begin with the creation of a sinking fund for the retirement of said bonds before two years from the date of issuing same. The said Treasurer shall pay out the moneys set apart to the hospital maintenance fund upon the order of the executive committee of the hospital, and it shall be the duty of the Board of Commissioners of Cabarrus County to annually levy and collect as other taxes a special tax not exceeding the limit provided by this Act, sufficient to pay the interest on said bonds, and to provide the necessary sinking fund for the payment of same, and also to afford the necessary maintenance fund as herein provided.

"Sec. 4. The bonds issued under the provisions of this Act shall mature in not exceeding thirty years from date, and shall be in such denominations as the County

Commissioners shall determine, and shall draw interest at a rate not exceeding six per cent annually, or semi-annually, and said bonds shall be serial bonds, maturing in such amounts as may be determined by the County Commissioners. The first installment shall fall due not later than five years from date of issue of said bonds, and the last installment falling due not later than thirty years from date of said issue.

"Sec. 5. Should a majority of the qualified voters of Cabarrus County, under any election held under this Act, vote "For Cabarrus Memorial Hospital," then the County Commissioners shall at once appoint a Board of Trustees, one trustee to come from each and every voting precinct in the county. Said Board of Trustees shall be divided into three groups, the members of the first group being appointed for two years, the members of the second group being appointed for three years, the members of the third group being appointed for four years. Upon the first meeting of the Board of Trustees, which shall not be less than ten days from the date of appointment, the said Board shall appoint an executive committee composed of seven members from the trustees, all residents of the county. The Cabarrus County Medical Society and the Medical Staff of the hospital may each nominate for appointment by the Board of Trustees two practicing physicians to serve as honorary and advisory members of said executive committee; such advisory members shall serve without voting power. Said executive committee shall be divided into three groups, the members of the first group being appointed for one year, the members of the second group being appointed for two years, and the members of the third group being appointed for three years. In case of any vacancy for any cause on the executive committee, except for expiration of term of appointment, the executive committee shall of its own motion fill the unexpired term. In case of vacancy on the Board of Trustees for any cause, including the creation of a new voting precinct in the county in which a member does not reside and the expiration of terms of all members, the said Board shall fill the vacancy by electing a new member who resides within the newly created voting precinct or from the same voting precinct as that of the retired member. In the event two or more voting precincts should be consolidated, the appointment of all members residing within the new voting precinct shall thereupon terminate and the Board of Trustees shall appoint a member from the newly created voting precinct. The Board of Trustees shall appoint members of the executive ~~commitee~~ committee upon the expiration of their terms of office.

"Sec. 6. The said executive committee shall within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as an executive committee by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them. No member shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such member, and an itemized statement of such expenses and money paid out shall be made under oath by each of such members and filed with the Secretary and allowed only by the affirmative vote of all the members present at a meeting of the executive committee. The executive committee shall make and adopt such by-laws, rules and regulation for their own guidance and for the government of the hospital as may be deemed ~~expeidient~~ expedient for the economic

and equitable conduct thereof, not inconsistent with this Act, and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all moneys collected to the credit of the hospital fund, and the purchase of site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased, or set apart for that purpose: Provided that all moneys received for the credit of such hospital shall be deposited in a special fund for the hospital and shall be paid out only upon warrants or checks drawn by a proper officer designated by the executive committee upon due authorization of such committee. Said executive committee shall have the power to appoint a chief executive officer and necessary assistants, and to fix their compensation and shall in general carry out the spirit and intent of this act in establishing and maintaining a county general acute care hospital. Such committee shall hold meetings at least once each month, shall keep a complete record of all its proceedings, and four members of such committee shall constitute a quorum for the transaction of business. One of said members shall visit and examine said hospital at least twice each month, and the committee shall during the first week in January of each year file with the Board of Commissioners of said county a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditure during the year, and shall at such time certify to the Board of County Commissioners the amount necessary to maintain and improve such hospital for the ensuing year. No member shall have a personal pecuniary interest, either directly or indirectly, and the purchase of any supplies for said hospital, unless the same are purchased by competitive bidding. Provided, that such hospital may render care and services to members of the Board of Trustees and to companies in which such members may have an interest on those terms and conditions as such care and services are otherwise made available.

"Sec. 7. The hospital established under this Act shall be for the benefit of the inhabitants of Cabarrus County, and of any person falling sick or being injured or maimed within its limits; but every inhabitant or person who is not a pauper shall pay to such executive committee or such officers as it shall designate for such county public hospital a reasonable compensation for occupancy, nursing, care, medicine, and/or attendance, according to the rules and regulations prescribed by said executive committee, such hospital always being subject to such reasonable rules and regulations as said committee may adopt in order to render the use of said hospital of the greatest benefit to the greatest number; and said executive committee may exclude from the use of such hospital any and all inhabitants and persons who shall willfully violate such rules and regulations; and said committee may extend the privileges and use of such hospital to persons residing outside of Cabarrus County upon such terms and conditions as said executive committee may from time to time by its rules and regulations prescribe.

"Sec. 8. When such hospital is established, the physicians, nurses, attendants, the person sick therein, and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said executive committee may prescribe.

"Sec. 9. That "Cabarrus Memorial Hospital" is hereby declared to be a body corporate, with power to receive and hold gifts, grants, and devices of real and personal property, to sue and be sued, and to do any and all lawful acts necessary to carry out the objects of its creation, and shall possess all other rights and powers usually incident to corporations. Such rights and powers shall include, without limitation, the authority to sell real and personal property; to establish additional locations to render medical services; to establish trusts or foundations to administer hospital funds; to retain securities donated to such hospital notwithstanding the provisions of Chapter 159 of the General Statutes relating to permissible investments; and to enter into private long term leases or subleases of hospital owned or leased real property for periods not exceeding 10 years without notice or other compliance with Chapter 160A of the General Statutes. ~~Cabarrus Memorial Hospital may use a single prime contractor contract, a construction management contract, or a design-build contract for the erection, construction, alteration, or repair of any building at any of its facilities. The previous sentence shall apply only to contracts entered into on or before July 1, 1992.~~

"Sec. 10. The executive committee of such hospital shall determine the conditions under which the privileges of practice may be available and shall promulgate rules and regulations governing the conduct of such practice at said hospital.

"Sec. 11. Notwithstanding G.S. 116-15, the Executive Committee of Cabarrus Memorial Hospital may establish and maintain in connection with and as a part of the hospital an educational program for nursing and allied health sciences. The Executive Committee may award an Associate, Baccalaureate, and advanced degrees to graduates of the nursing education or allied health sciences programs as appropriate.

"Sec. 12. The executive committee shall have the power to determine rates to be charged for hospital services, to evaluate and approve or reject claims for charity services and to generally establish collection policies and practices for the hospital.

"Sec. 12.1. (a) Notwithstanding anything herein or elsewhere in the laws of this State to the contrary, so long as (i) there are no county bonds issued for the benefit of Cabarrus Memorial Hospital outstanding; (ii) there is no county tax levy for the direct benefit of the hospital; and (iii) the Executive Committee of the hospital operates Cabarrus Memorial Hospital as an acute care general hospital open to the general public free of discrimination based upon race, creed, color, sex or national origin and on a nonprofit basis, the provisions of Chapter 159 of the General Statutes of North Carolina relating to public hospitals, and any other provisions of the General Statutes relating to public hospitals, shall not be applicable to Cabarrus Memorial Hospital and its Executive Committee.

(b) As long as the conditions of subsection (a) of this section continue to be satisfied, the Executive Committee of Cabarrus Memorial Hospital may operate Cabarrus Memorial Hospital in the same manner as private nonprofit corporations operate acute care hospitals in this State without the limitations and restrictions applicable to public hospitals under the laws of this State; and that the Executive Committee may provide for the governance of the hospital in such manner as it deems in the best interest of the hospital."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 677*

Short Title:	Expunge Nonviolent Felony/Youthful Offender.	(Public)
Sponsors:	Senators Berger of Franklin; Dannelly and Malone.	
Referred to:	Judiciary ll (Criminal).	

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

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

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

and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential records of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts to conduct the searches and report the findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma or a high school graduation equivalency certificate or that the petitioner is attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

(d) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good behavior and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(4) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(5) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma or high school graduation equivalency certificate or is attending a program in pursuit of a General Education Development Degree or adult high school diploma.

(6) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

No person as to whom an order has been entered pursuant to this subsection shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction.

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

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

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

(h) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(i) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred dollars ($100.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective December 1, 2007, and expires December 1, 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 677*
PROPOSED COMMITTEE SUBSTITUTE S677-CSRD-10 [v.9]

4/23/2007 7:02:50 PM

Short Title: Expunge Nonviolent Felony/Youthful Offender. (Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 15A-150. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been charged and arrested for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file

a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than two years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

(1) An affidavit by the petitioner that the petitioner has been of good moral character for the two-year period since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development Degree.

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

hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

(d) The court in which the petition was filed may take the following steps and may consider at least the following issues in rendering a decision upon a petition for expunction of records of a nonviolent felony under this section:

(1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the two-year period since the date of conviction of the nonviolent felony in question.

(2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.

(3) Review the amount of restitution made by the petitioner to the victim of the nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.

(4) Review any other information the court deems relevant, including but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(5) The petitioner was less than 18 years old at the time of the commission of the offense in question.

(6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate or a General Education Development Degree.

(7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(f) No person as to whom an order has been entered pursuant to subsection (d) of this section shall be held thereafter under any provision of any laws to be guilty of

perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapters 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal background check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

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

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted expunctions under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(2) To State and local law enforcement agencies for employment purposes only.

(3) To The North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.

(4) To The North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(k) A person who files a petition for expunction of a criminal record under this section shall pay the clerk of superior court a fee of one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 17C-13 reads as rewritten:

"**§ 17C-13. ~~Pardons.~~Pardons; expunctions.**

(a) When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 3. G.S. 17E-12 reads as rewritten:

"**§ 17E-12. ~~Pardons.~~ Pardons; expunctions.**

(a) When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 4. This act becomes effective December 1, 2007, and expires December 1, 2014.

SENATE BILL 677:
Expunge Nonviolent Felony/Youthful Offender

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 23, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S677-CSRD		Committee Counsel

SUMMARY: ***Senate Bill 677 would provide for the expunction of a nonviolent felony conviction from the criminal record of an offender who was under the age of 18 at the time of the commission of the nonviolent felony. A petition for expunction may not be filed earlier than two years after the latter or either the date of the conviction or the completion of the active sentence, period of probation, or post- release supervision. The petition shall include affidavits supporting the following: completion of 100 hours of community service, no prior or subsequent felony or misdemeanor convictions (other than traffic violations), no outstanding warrants or pending criminal cases, no outstanding restitution orders or civil judgments, and possession or current pursuit of a high school diploma, high school graduation equivalency certificate, or General Education Development (GED) Degree.***

[As introduced, this bill was identical to H898, as introduced by Reps. Bordsen, Crawford, Hall, Jones, which is currently in House Juvenile Justice.]

CHANGES MADE BY PCS:

- Authorizes the court to make inquiries of certain specific agencies and persons to collect information about the petitioner for the court to consider when making its ruling on a petition for expunction of a nonviolent felony (probation records, juvenile records, payment of restitution, and testimony of victims, law enforcement officers or district attorneys)[1].
- Raises fee to be paid for filing a petition for expunction of a nonviolent felony to $125.00.
- Increases time period for DA to file an objection to a petition for expunction to 30 days.
- G.S. 15A-150(b) - Would change language found in the 1st edition of the bill, to provide that if a person is convicted of more than one nonviolent felony in the same session of court, the multiple nonviolent felony convictions shall be treated as one nonviolent felony for expunction purposes only if none of the nonviolent felines are alleged to have occurred after the person had already been charged and arrested for a nonviolent felony.
- G.S. 15A-150(c)(1) and G.S. 15A-150(d)(1) – Would change references to "good behavior" found in the 1st edition of the bill to "good moral character."
- G.S. 15A-150(c)(4) and G.S. 15A-150(d)(3) – Would add an additional requirement on the application to the Administrative Office of the Courts (AOC) to request and authorize the Department of Justice to search for any outstanding warrants or pending criminal cases.

  To order expungement a court must find, among other things, that the petitioner has no outstanding warrants or pending criminal cases.
- G.S. 15A-150(c)(7) – Would require the petitioner for expunction to possess a high school diploma, a high school graduation equivalency certificate, or a GED (language of the 1st

[1] Proposed G.S. 15A-150(d).

edition of the bill provided "the petitioner is attending a basic skills program in pursuit of a [GED] or adult high school diploma).

- G.S. 15A-150(d), last paragraph, would require persons pursuing employment with law enforcement agencies to disclose felony convictions even if they have been expunged.
- G.S. 15A-150(g) – Would add language allowing AOC to disclose information in their confidential expunction files to law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, The North Carolina Sheriffs' Education and Training Standards Commission for employment and certification purposes only.
- Sections 2 and 3 of the bill would give the Commissions access to the expunction information and authorize the Commissions to deny, suspend, or revoke certification based on an expunged felony conviction.
- Would allow the court to use its discretion in ordering expunction of nonviolent felonies from a person's record, rather than directing the court to issue the order following a hearing at which the court finds the required elements to be present (15A-150(d)).
- Removed sunset provision from the effective date section (Section 4).

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

1) an affidavit of good behavior for the two years following conviction, stating that the petitioner has not been convicted of any felony or non-traffic misdemeanor charge;

2) two affidavits of good character from persons unrelated to the petitioner;

3) a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) affidavits of the clerk of superior court, chief of police, and sheriff of the county of the offense and where the petitioner resides showing that petitioner has not been convicted of a felony or non-traffic misdemeanor offense prior to or in the two years since the conviction in question.

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

Other sections of Article 5 provide for "Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud"[3], "Expunction of DNA records when charges are

[2] G.S. 15A-145(a)(1) through (4).
[3] G.S. 15A-147.

dismissed on appeal or pardon of innocence is granted"[4], and "Expunction of records when pardon of innocence is granted."[5]

BILL ANALYSIS: The bill would add a new section to Article 5 "Expunction of Records" of Chapter 15A "Criminal Procedure Act" of the General Statutes. The proposed G.S. 15A-150 would allow for the expunction of a nonviolent felony from the criminal records of a first time offender who is under 18 years of age at the time of the commission of the nonviolent felony if the person has no previous or subsequent felony or misdemeanor convictions, other than traffic violations. "Nonviolent felony" would include any felony *except* the following:

- A Class A through G felony;
- A felony that includes assault as an essential element of the offense;
- A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes (sex offenders); and
- Any Chapter 90 felony offense involving methamphetamines.

If the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been charged and arrested for a nonviolent offense, the bill provides that the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction and be expunged from the person's record by the expunction order issued under this section.

The procedure to be followed by the petitioner is modeled along the lines of the existing procedures for expunction of records. The petition may not be filed earlier than two years after the date of conviction or after the time that any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. The petitioner is also required to perform at least 100 hours of community service before filing the petition for expunction.

The petition must contain at least the following:

1) An affidavit of **good moral character** by the petitioner for the two years following conviction, stating that the petitioner has not been convicted of any felony or misdemeanor charge, other than traffic violations, under the laws of the United States, this State or any other state during that time;

2) Two affidavits of **good moral character** from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted;

4) An application authorizing a State and national criminal record check and **search for outstanding warrants or pending criminal cases** by the Department of Justice with the results reported to the court;

5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding;

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[4] G.S. 15A-148.
[5] G.S. 15A-149.

6) An affidavit by the petitioner that he or she has performed at least 100 hours of community service since the conviction with a list of the community services performed, a list of the recipients of the services, and a detailed description of the services; and

(7) An affidavit by the petitioner that the petitioner possesses a high school diploma, high school graduation equivalency certificate, **or a GED**.

The petition is served on the district attorney, who has 30 days to file any objections. The district attorney is directed to contact the victim, if any, to notify the victim of the request for expunction prior to the hearing date. The judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct. If the judge finds that the petitioner has met all of the requirements, the judge shall order that the petitioner be restored to the status he or she had before the arrest or indictment. The judge shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records, including the State Bureau of Investigation and the Federal Bureau of Investigation. Department of Justice DNA records and samples stored in the State DNA database and the State DNA Databank, however, shall not be expunged or destroyed as a result of any order for expunction of records issued under this section.

Any other applicable State or local government agency is directed to expunge from its records any entries made as a result of the conviction order expunged under this section. The agency is required to also reverse any administrative actions taken against a person whose record is expunged under this section.

The clerk of superior court in each county would be required to file with the AOC the names of those persons granted a discharge under the provisions of this section and the AOC must maintain a confidential file containing the names of persons granted conditional discharges. This information can only be disclosed to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge, and to **law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, and The North Carolina Sheriffs' Education and Training Standards Commission for employment and certification purposes only.**

The PCS would require persons pursuing employment with law enforcement agencies to disclose felony convictions even if they have been expunged and would give the Commissions access to the expunction information and authorize the Commissions to deny, suspend, or revoke certification based on an expunged felony conviction.

If a probation officer is assigned to a person eligible for expunction, the probation officer must notify the person of the provisions of this section. If no probation officer is assigned, then the court which heard the felony must provide notification of the possibility of expunction under this section.

Filing fees for the expunction petition would be set at $125.00 unless the petitioner is indigent. Fees collected would be deposited into the General Fund.

EFFECTIVE DATE: The bill would become effective December 1, 2007.

Jennifer McGinnis, counsel to Senate Judiciary II, substantially contributed to this summary.

S0677e1-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 880

Short Title:	Bail Bonds/Amend Forfeiture Requirement.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BOND FORFEITURE SHALL BE SET ASIDE IF THE DEFENDANT FAILED TO APPEAR BECAUSE THE DEFENDANT WAS INCARCERATED ANYWHERE IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(b)(6) reads as rewritten:

"(6) The defendant was incarcerated ~~in a unit of the Department of Correction and is~~ anywhere serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the ~~State~~ United States at the time of the failure to appear."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 881

Short Title:	Clarify Residency Requirements/Bail Bondsmen.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RESIDENCY REQUIREMENTS FOR LICENSURE UNDER THE LAWS PERTAINING TO BAIL BONDSMEN AND RUNNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-50(b)(2) reads as rewritten:

"(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

...

(2) ~~Be a resident of this State.~~Submit proof of residency in this State to the Commissioner at least six consecutive months before applying to be licensed as a bail bondsmen or runner in this State. As proof of residency, the applicant must submit a valid North Carolina drivers license and present at least two of the following types of documentation:

a. A pay stub with the payee's address.

b. A utility bill showing the address of the applicant-payor.

c. A contract for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.

d. A receipt for personal property taxes paid.

e. A receipt for real property taxes paid to a North Carolina locality.

f. A current automobile insurance policy issued to the applicant and showing the applicant's address.

g. A monthly or quarterly financial statement from a North Carolina regulated financial institution.

The Commissioner, at the Commissioner's discretion, may require the applicant to submit more than two types of documentation as proof of residency.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 881
PROPOSED COMMITTEE SUBSTITUTE S881-CSRC-17 [v.1]

4/18/2007 11:28:44 PM

Short Title: Define Residency Requirements/Bail Bondsmen. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO DEFINE THE RESIDENCY REQUIREMENTS FOR LICENSURE UNDER THE LAWS PERTAINING TO BAIL BONDSMEN AND RUNNERS AND TO MAKE OTHER STYLISTIC CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

~~The following words when used in this Article shall have the following meanings:~~ The following definitions apply in this Article:

(1) ~~"Accommodation bondsman" is a~~ Accommodation bondsman. – A person who shall not charge a fee or receive any consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that the real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized if there is a breach of the conditions of the bond. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety as long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of the bail bond.

(2) ~~"Bail bond" shall mean an~~ Bail bond. – An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an

appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) ~~"Bail bondsman" shall mean a~~ Bail bondsman. – A surety bondsman, professional bondsman or an accommodation bondsman as ~~hereinafter defined.~~defined in this section.

(4) ~~"Commissioner" shall mean the~~ Commissioner. – The North Carolina Commissioner of Insurance.

(4a) ~~"First-year licensee" means any~~ First-year licensee. – Any person who has been licensed as a bail bondsman or runner under this Article and who has held the license for a period of less than 12 months.

(5) ~~"Insurer" shall mean any~~ Insurer. – Any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(6) ~~"Obligor" shall mean a~~ Obligor. – A principal or a surety on a bail bond.

(7) ~~"Principal" shall mean a~~ Principal. – A defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) ~~"Professional bondsman" shall mean any~~ Professional bondsman. – Any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and who receives or is promised money or other things of value ~~therefor.~~in exchange for writing the bail bonds.

(8a) Resident. - A person who lives in this State for at least six consecutive months prior to applying for a license under this Article.

(9) ~~"Runner" shall mean a~~ Runner. – A person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, ~~or to assist~~assisting in the apprehension and surrender of defendant to the court, ~~or~~ keeping the defendant under necessary surveillance, or ~~to execute~~ executing bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not ~~include, however,~~ include a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(9a) ~~"Supervising bail bondsman" means any~~ Supervising bail bondsman. – Any person licensed by the Commissioner as a professional bondsman or surety bondsman who employs or contracts with any new licensee under this Article.

(10) ~~"Surety" shall mean one~~ Surety. – One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) ~~"Surety bondsman" means any~~ Surety bondsman – Any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and who receives or is promised consideration for doing so."

SECTION 2. G.S. 58-71-50(b) reads as rewritten:

"(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

(1) Be 18 years of age or over.
(2) Be a resident of this State.
(3) Repealed by Session Laws 1998-211, s. 23.
(4) Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
(5) Have no outstanding bail bond obligations.
(6) Have no current or prior violations of any provision of this Article or of Article 26 of Chapter 15A of the General Statutes or of any similar provision of law of any other state.
(7) Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business.
(8) Hold a valid and current North Carolina drivers license."

SECTION 3. G.S. 58-71-50 is amended by adding a new subsection to read:

"(c) An applicant for a license as a bail bondman or runner shall provide to the Commissioner at least two of the following documents as proof of residency in this State:

(1) A pay stub showing the applicant's residential address in this State.
(2) A utility bill showing the applicant's residential address in this State.
(3) A written lease agreement or contract for purchase and sale signed by the applicant and for a residence located in this State.
(4) A receipt for personal property taxes paid by the applicant to a North Carolina unit of local government.
(5) A receipt for real property taxes paid by the applicant to a North Carolina unit of local government.
(6) A monthly or quarterly statement showing the applicant's residential address in this State and issued by a financial institution for an account held by the applicant.

Subject to rules adopted by the Commissioner, an applicant may be required to provide additional documentation as proof of residency in this state."

SECTION 4. This act becomes effective October 1, 2007, and applies to applications for licensure made on or after that date.

SENATE BILL 881:
Define Residency Requirements/Bail Bondsmen

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 19, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S881-CSRC-17		

SUMMARY: ***Senate Bill 881 would provide a definition for the existing residency requirement to become licensed as a bail bondsman or runner. It would require that an applicant provide at least two forms of documentation as proof of residency. It would also require the applicant to have a current and valid North Carolina driver's license.***

The Proposed Committee Substitute makes mostly organizational and stylistic changes in that it places the definition of "resident" in the definitions section of Article 71 of Chapter 58 and separates the drivers license requirement from the requirement that the applicant provide documentation as proof of residence. It also requires that the Commissioner adopt rules regarding when an applicant must provide more than two forms of documentation as proof of residency.

The act would become effective October 1, 2007, and apply to applications for licensure made on or after that date.

CURRENT LAW: Article 71 of Chapter 58 governs the licensure and regulation of bail bondsmen and runners. The Commissioner of Insurance is charged with administering the Article, including adopting rules, enforcing sanctions, and renewing, suspending or revoking licenses.

In order to be eligible to become a bail bondsman or runner, the applicant must provide a set of fingerprints and the Commissioner must request that the State Bureau of Investigation run a criminal background check. The SBI may forward the fingerprints to the Federal Bureau of Investigation for a national criminal background check.

An applicant must meet the following minimum qualifications:

- Be 18 years of age or older.
- Be a resident of this State.
- Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
- Have no outstanding bail bond obligations.
- Have no current or prior violations of any State law regarding bail bondsmen or runners or of any similar provision of law of any other state.
- Not otherwise be disqualified under the laws of North Carolina or any other state to engage in the bail bond business.

Article 71 does not provide any criteria for what constitutes being a "resident".

BILL ANALYSIS:

Section 1 amends the definitions section of Article 71 of Chapter 58 by defining "resident" as a person who has lived in North Carolina for at least six consecutive months prior to applying for a license. It

also makes stylistic changes to existing definitions so the section conforms to current drafting conventions.

Section 2 amends G.S. 58-71-50(b) regarding the requirements for licensure by adding the requirement that an applicant hold a current and valid North Carolina drivers license.

Section 3 adds a new subsection to G.S. 58-71-50 that requires an applicant provide at least 2 documents as proof of residency. The types of documents that may be used are:

- A pay stub showing the applicant's residential address in this State.
- A utility bill showing the applicant's residential address in this State.
- A written lease agreement or contract for purchase and sale signed by the applicant and for a residence located in this State.
- A receipt for personal property taxes paid by the applicant to a North Carolina unit of local government.
- A receipt for real property taxes paid by the applicant to a North Carolina unit of local government.
- A monthly or quarterly statement showing the applicant's residential address in this State and issued by a financial institution for an account held by the applicant.

An applicant could be required to submit additional documentation subject to rules adopted by the Commissioner.

EFFECTIVE DATE: The act would become effective October 1, 2007 and apply to applications made on or after that date.

S0881e1-SMRC-CSRC-17

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

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

S881-ARC-21 [v.1]

Date April 24 ,2007

Comm. Sub. [YES]
Amends Title [NO]
S881-CSRC-17[v.1]

Senator Berger of Franklin

moves to amend the bill on page 2, line 29, by deleting the phrase "prior to" and substituting the phrase "immediately before".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Principal Clerk ____
Reading Clerk ____

CORRECTED NOTICE SENATE BILL 83 ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 26, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 880	Bail Bonds/Amend Forfeiture Requirement.	Senator Berger
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
HB 189	Pyrotechnics Permits by Cities	Representative Bryant Representative Allen Representative Wray
SB 83	Amend Domestic Crim. Trespass.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, April 26, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 880	Bail Bonds/Amend Forfeiture Requirement.	Senator Berger
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
HB 189	Pyrotechnics Permits by Cities	Representative Bryant Representative Allen Representative Wray
SB 83	Amend Domestic Crim. Trespass.	Senator Snow

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

April 26, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on April 26, 2007, with fourteen members present. Senator Hartsell introduced pages Lucia Kopiarovci, Shiori Kobayashi, Regina Orakova, all exchange students and Curran Blackwell.

SB 880 (Bail Bonds/Amend Forfeiture Requirement.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Jones so moved, all voted and the motion carried. Senator Berger was recognized to explain the bill. Mr. Mark Black, representing the North Carolina Bail Agents Association, and Mr. Bill O'Donnell, representing the North Carolina School Boards Association, spoke in agreement with the bill. Senator East's question was answered by Mr. Black. Senator Jones moved for a favorable report. All voted and the motion carried.

SB 83 (Amend Domestic Crim. Trespass.) Senator Snow was recognized to explain the bill. Questions from Senators Dannelly, Bingham, and East were answered by Senator Snow. Senator Snow presented a technical amendment and moved that it be adopted. All voted and the motion carried. Senator Apodaca moved for a favorable report to the Proposed Committee Substitute as amended and rolled into a new Committee Substitute, with a referral to Appropriations. All voted and the motion carried.

HB 189 (Pyrotechnics Permits by Cities) Representative Allen was recognized to explain the bill. Senator Jones moved for a favorable report, all voted and the motion carried.

SB 1046 (Advance Directives/Health Care Pwr. Atty.-AB) As this was Senator Hartsell's bill he invited Senator Jones to chair the meeting. Senator Jones recognized Senator Hartsell to explain the bill. Senator Hartsell then introduced Mr. Jim Creamer, representing the Bar Association and Dr. Phil Sellers, representing the North Carolina Medical Society, to continue the explanation. Questions from Senators Swindell, Goodall and Dorsett were answered by Mr. Creamer and Dr. Sellers. Senator Jones noted that consideration of the bill would be continued at May 1, 2007, meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, April 26, 2007

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

FAVORABLE

H.B.(CS #1) **189** Pyrotechnics Permits by Cities
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, April 30, 2007

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

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

S.B. **83** Amend Domestic Crim. Trespass.

Draft Number:	PCS 85303
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

S.B. **880** Bail Bonds/Amend Forfeiture Requirement.

Draft Number:	PCS 75393
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Corrected Copy

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANN LORE	DOJ
Ray Starling	NCDA
David McLeod	NCDACS
David Sorey	BFWS
TRoy PAGE	N.C. SENTENCING COMMISSION
Wayne Yang	Staff
Yolanda Smith	TharringtonSmith, LLP
Bill O'Donnell	NCSBA
[illegible]	SA
Hubert Wilson	NCHFA
Lawrence Jones	NCHA
Gary [illegible]	NCAHO

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Wilson	AARP
[illegible]	NCFB
Phyllis Lee	City of Roanoke Rapids
Andy Ellen	NCAWA
[illegible] Pierson	NC BAR ASSN
Michael Clay	Catholic Diocese of Raleigh
ELIZABETH WICKHAM	LIFETREE
ROSE McCREERY II	LIFETREE
Barbara Host	NCRTC
STEVE KEENE	NCMS
Melanie Phelps	NCMS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 26, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chip Baggett	NCMS
Doug Heron	NC Bar Assn
John Crill	NC Bar
Jim Cremmer	NC BAR
Phil Sellers MD	NC Med Soc.
Elizabeth Dalton	NCPMA
Jamal Jones	NCHA
Joe McClees	McClees Consulting
	ODAC, PA
Christine Wunsche	105 - Daily Bulletin

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 880

Short Title:	Bail Bonds/Amend Forfeiture Requirement.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BOND FORFEITURE SHALL BE SET ASIDE IF THE DEFENDANT FAILED TO APPEAR BECAUSE THE DEFENDANT WAS INCARCERATED ANYWHERE IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(b)(6) reads as rewritten:

"(6) The defendant was incarcerated ~~in a unit of the Department of Correction and is~~ anywhere serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the ~~State~~ United States at the time of the failure to appear."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 880
PROPOSED COMMITTEE SUBSTITUTE S880-CSRC-20 [v.1]

4/25/2007 10:28:10 PM

Short Title: Bail Bonds/Amend Forfeiture Requirement. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BOND FORFEITURE SHALL BE SET ASIDE IF THE DEFENDANT FAILED TO APPEAR BECAUSE THE DEFENDANT WAS INCARCERATED ANYWHERE IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5 reads as rewritten:

"**§ 15A-544.5. Setting aside forfeiture.**

(a) Relief Exclusive. – There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. Subsections (f), (g), ~~(h), and (i)~~ and (h) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside. – A forfeiture shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in ~~question.~~ question as

evidenced by a copy of an official court record, including an electronic record,

(5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.

(6) The defendant was incarcerated in a unit of the North Carolina Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to ~~appear.~~appear as evidenced by a copy of an official court record or a copy of a document from the Department of Correction or Federal Bureau of Prisons, including an electronic record.

(7) The defendant was incarcerated in a local, state, or federal detention center, jail or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidence by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

(c) Procedure When Failure to Appear Is Stricken. – If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any forfeiture of that bail bond. When an order setting aside a forfeiture is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given under G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the forfeiture be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion is filed in the office of the clerk of superior court of the county in which the forfeiture was entered, and a copy is served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the forfeiture.

(7) If at the hearing the court does not enter an order setting aside the forfeiture, the forfeiture shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(8) If at the hearing the court determines that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to attach the required documentation was unintentional. This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation.

(e) Only One Motion Per Forfeiture. – No more than one motion to set aside a specific forfeiture may be considered by the court.

(f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Forfeiture Is Set Aside. – If a forfeiture is set aside under this section, the forfeiture shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. – An order on a motion to set aside a forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions the court considers appropriate."

SECTION 2. G.S. 15A-544.3(b)(9) reads as rewritten:

"(b) The forfeiture shall contain the following information:

. . .

(9) The following notice: "TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A forfeiture for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above

on the date of forfeiture shown above. This forfeiture will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in ~~question,~~question as evidenced by a copy of an official court record, including an electronic record; (v) the defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate, ~~or~~ (vi) the defendant was incarcerated in a unit of the North Carolina Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to ~~appear.~~as evidenced by a copy of an official court record or a copy of a document from the Department of Correction or Federal Bureau of Prisons; or (vii) the defendant was incarcerated in a local, state, or federal detention center, jail or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidence by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed. The forfeiture will not be set aside for any other reason. If this forfeiture is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the forfeiture will become a final judgment on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

SECTION 3. This act becomes effective October 1, 2007 and applies to forfeitures entered on or after that date.

SENATE BILL 880:
Bail Bonds/Amend Forfeiture Requirement

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 25, 2007
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Kory Goldsmith
Version:	PCS to First Edition S880-CSRC-20		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 880 provides that the forfeiture of a bail bond shall be set aside if the defendant is incarcerated anywhere in the United States on the day the defendant was required to appear in court and failed to do so, the district attorney(DA) was notified of the defendant's incarceration and the defendant remains incarcerated for at least 10 days after the DA's receipt of the notice. It also would allow a court to impose monetary sanctions against a surety who attached fraudulent documentation to the motion to set aside a forfeiture.***

The act would become effective October 1, 2007 and apply to forfeitures entered on or after that date.

CURRENT LAW: G.S. 15A-544.5 sets out 6 grounds for setting aside the forfeiture of a bail bond. These include situations where the defendant's failure to appear has been set aside by the court, the charges have been finally disposed by the court, the defendant was surrendered to the court by the surety, the defendant died within the period of the forfeiture, or the defendant was incarcerated in North Carolina in a State prison or is serving a sentence in a unit of the Federal Bureau of Prisons in North Carolina. In cases where the State proves that the surety had notice or actual knowledge before executing the bond that the defendant had already failed to appear on two or more occasions for the same offense, the forfeiture of the bond may not be set aside for any reason.

S0880e1-SMRC-CSRC-20

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1046

Short Title:	Advance Directives/Health Care Pwr. Atty.-AB	(Public)
Sponsors:	Senators Hartsell; Forrester, Purcell, and Soles.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; AND TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life-sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending ~~physician. In this case, G.S. 90-322 does not apply.~~physician, as G.S. 90-322 shall not apply in such case."

SECTION 2.(a) G.S. 32A-16(1) reads as rewritten:

"(1) "Disposition of remains" means the decision to bury or cremate human ~~remains as~~ remains, as human remains are defined in G.S. ~~90-210.121(17).~~90-210.121, and, subject to G.S. 32A-19(b), funeral arrangements relating to burial or cremation."

SECTION 2.(b) G.S. 32A-16(1a) reads as rewritten:

"(1a) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or

mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section."

SECTION 2.(c) G.S. 32A-16(3) and (4) read as rewritten:

"(3) "Health care power of attorney" means a written ~~instrument,~~instrument that substantially meets the requirements of this Article, is signed in the presence of ~~two qualified witnesses, and acknowledged before a notary public,~~ at least one qualified witness, and is acknowledged before a notary public (who need not be a qualified witness), pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal.

(4) ~~"Life-sustaining procedures"~~ "Life-prolonging measures" are those forms of care or treatment which only serve to ~~artificially prolong~~prolong artificially the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain."

SECTION 2.(d) G.S. 32A-16(6) reads as rewritten:

"(6) "Qualified witness" means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the

giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"**§ 32A-24. Reliance on health care power of attorney; defense.**

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 36A-25, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"§ 32A-25.1. Statutory form health care power of attorney.

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

(NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.)

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of a attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent broad powers to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State.

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____
B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____
C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ (Physician)
2. _____ (Physician)

If I have not designated a physician, or no physician(s) named above are reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a trustee or successor trustee under any trust agreement of which I am a grantor or trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce

my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration. In exercising the authority to make health care decisions on my behalf, my health care agent:

_____(Initial) shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____(Initial) shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition.

_____(Initial) B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition

of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the

scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____(Initial) donate any needed organs or parts; or

_____(Initial) donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____(Initial) donate my body for anatomical study if needed

_____(Initial) In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be guardian of my person, to serve without bond of security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my

health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This health care power of attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of signer)

_____

(type/print name of witness)

Date _____ _____

(Official Seal) Signature of Notary Public

_____, Notary Public

Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"§ 32A-27. Health care powers of attorney executed in other jurisdictions.

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"§ 35A-1208. Authority for health care decisions.

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or his representative has the fundamental right to control the decisions relating to the rendering of his own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or his representative may exercise these rights.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) As used in this Article the term:

(1) "Declarant" means a person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section;

(1a) 'Declaration' means any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section;

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(3) "Physician" means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina;

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a~~

~~sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician, if another physician is reasonably available;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are~~ That has been signed by the declarant in the presence of at least one witness who believes the declarant to be of sound mind and who states that he (i) is not related within the third degree to the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have a reasonable expectation that ~~they~~ he would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group care home in which the declarant resides,~~is not the attending physician, or a licensed health care provider who is a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides, and (iv) ~~do~~ does not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) ~~below.~~of this section."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future about whether you want your health care providers to apply life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family

members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State.

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply if my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____(Initial) I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____(Initial) I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____(Initial) I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____(Initial) may withhold or withdraw life-prolonging measures.

_____(Initial) shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

(NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.)

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____(Initial) I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.)

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____(Initial) Follow Advance Directive: This Advance Directive will override instructions my health care agent gives about prolonging my life.

_____(Initial) Follow Health Care Agent: My health care agent has authority to override this Advance Directive.

(NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.)

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this

instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I am competent, I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarent, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) nor an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of principal)

_____

(type/print name of witness)

Date _____ _____

Signature of Notary Public

(Official Seal)

_____, Notary Public

Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to~~

~~the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no

duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1)~~ ~~It is determined by the attending physician that the person's present condition is:~~

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

~~c. Diagnosed as a persistent vegetative state; and~~

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;

~~(4) The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children at least 18 years of age; or

(6) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) ~~A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~

(1) Consent that is evidenced in writing, and that is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption may be rebutted only upon proof that such consent was obtained by fraud, deception, or misrepresentation of a material fact.

(2) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

a. A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

b. A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

c. An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or

Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

d. The patient's spouse;

e. A majority of the patient's reasonably available parents and children at least 18 years of age; or

f. An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the persons listed under this subdivision is available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is conformation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"**§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.**

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's

representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file."

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form, and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; the name and telephone number of the physician, physician assistant, or nurse practitioner authorizing the order by signing the form; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e. the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; a signature clock for the patient or the patient's representative to sign if practicable; effective date of the form and review dates; and an advisory that the MOST may be revoked by the patient or the patient's representative. The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of extraordinary care pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST

not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15. G.S. 130A-420 reads as rewritten:

"**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

~~(1) The surviving spouse.~~

~~(2) A majority of the surviving children.~~

~~(3) The surviving parents.~~

~~(4) A majority of the surviving siblings.~~

~~(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.~~

~~(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.~~

(1a) The health care agent under a health care power of attorney giving the health care agent that authority to the extent provided in G.S. 32A-19(b).

(2a) The personal representative of the estate of the decedent, or the person named executor in a will prior to appointment.

(3a) The surviving spouse.

(4a) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(5a) The surviving parents.

(6a) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(7) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(8) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(9) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 16.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 16.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16.(c) G.S. 122C-72(1) reads as rewritten:

"(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of ~~two qualified witnesses who believe~~ at least one qualified witness who believes the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable."

SECTION 17. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 18. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~ arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 19.(a) G.S. 90-210.63 is amended by adding the following new subsection to read:

"(c) The following persons, in the priority listed below, shall have the right to serve as the legal representative of the preneed contract beneficiary:

(1) The health care agent under a health care power of attorney for the preneed contract beneficiary with authority to make funeral decisions to the extent provided in G.S. 32A-19(b);

(2) The personal representative of the estate of the preneed contract beneficiary, or the person named executor in a will prior to appointment; or

(3) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death:

a. The spouse of the preneed contract beneficiary;

b. Any adult child or stepchild of the preneed contract beneficiary;

c. Any parent of the preneed contract beneficiary;

d. Any adult sibling of the preneed contract beneficiary; or

e. A guardian of the person of the preneed contract beneficiary at the time of the preneed contract beneficiary's death."

SECTION 19.(b) G.S. 90-210.124(a) and 90-210.124(a)(1) read as rewritten:

"(a) The following ~~person,~~persons in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney giving the health care agent that authority to the extent provided in ~~Article 3 of Chapter 32 of the General Statues,~~ G.S. 32A-19(b), pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual."

SECTION 20. G.S. 90-321(e) reads as rewritten:

"(e) A ~~The above~~ declaration may be revoked by the declarant, in writing or in any manner by which ~~he~~ the declarant is able to communicate his or her intent to revoke in a clear and consistent manner, without regard to his or her mental or physical condition. ~~Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~ A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration."

SECTION 21. This act is effective when it becomes law.

HIPAA PERMITS DISCLOSURE OF MOST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Medical Orders
for Scope of Treatment (MOST)

This is a Physician Order Sheet based on the person's medical condition and wishes. Any section not completed indicates full treatment for that section. When the need occurs, first follow these orders, then contact physician.

Patient's Last Name:	Effective Date of Form: *Form must be reviewed at least annually.*
Patient's First Name, Middle Initial:	Date of Birth:

Section A *Check One Box Only*

CARDIOPULMONARY RESUSCITATION (CPR): Person has no pulse and is not breathing.

☐ **Attempt Resuscitation (CPR)** ☐ **Do Not Attempt Resuscitation (DNR/no CPR)**

When not in cardiopulmonary arrest, follow orders in **B, C,** and **D.**

Section B *Check One Box Only*

MEDICAL INTERVENTIONS: Person has pulse and/or is breathing.

☐ **Full Scope of Treatment:** Use intubation, advanced airway interventions, mechanical ventilation, cardioversion as indicated, medical treatment, IV fluids, etc.; also provide comfort measures. **Transfer to hospital if indicated.**

☐ **Limited Additional Interventions:** Use medical treatment, IV fluids and cardiac monitoring as indicated. Do not use intubation or mechanical ventilation; also provide comfort measures. **Transfer to hospital if indicated. Avoid intensive care.**

☐ **Comfort Measures:** Keep clean, warm and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. **Do not transfer to hospital unless comfort needs cannot be met in current location.**

Other Instructions _____

Section C *Check One Box Only*

ANTIBIOTICS

☐ **Antibiotics if life can be prolonged.**

☐ **Determine use or limitation of antibiotics when infection occurs.**

☐ **No Antibiotics** (use other measures to relieve symptoms).

Other Instructions _____

Section D *Check One Box Only in Each Column*

MEDICALLY ADMINISTERED FLUIDS AND NUTRITION: Offer oral fluids and nutrition if physically feasible.

☐ **IV fluids long-term if indicated**	☐ **Feeding tube long-term**
☐ **IV fluids for a defined trial period**	☐ **Feeding tube for a defined trial period**
☐ **No IV fluids** (provide other measures to ensure comfort)	☐ **No feeding tube**

Other Instructions _____

Section E *Check The Appropriate Box(es)*

DISCUSSED WITH AND AGREED TO BY:

Basis for order must be documented in medical record.

☐ Patient
☐ Parent of (unemancipated) minor
☐ Health care agent
☐ Legal guardian of the person
☐ Spouse
☐ Majority of patient's reasonably available parents and adult children
☐ An individual with an established relationship with the patient who is acting in good faith and can reliably convey the wishes of the patient

MD/DO, PA, or NP Name (Print):	**MD/DO, PA, or NP Signature** (Required):	**Phone #:**

Signature of Person, Parent of Minor, Guardian, Health Care Agent, Spouse, or Other Personal Representative (Signature is required and must either be on this form or on file)

I agree that adequate information has been provided and significant thought has been given to life-sustaining treatment. Treatment preferences have been expressed to the physician (MD/DO), physician assistant, or nurse practitioner. This document reflects those treatment preferences and indicates informed consent.

If signed by a patient representative, preferences expressed must reflect patient's wishes as best understood by that representative. Contact information for personal representative should be provided on the back of this form.

Patient or Representative Name (print)	Patient or Representative Signature	Relationship (write "self" if patient)

SEND FORM WITH PATIENT/RESIDENT WHEN TRANSFERRED OR DISCHARGED

HIPAA PERMITS DISCLOSURE OF MOST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

Contact Information

Patient Representative:	Relationship:	Phone #: Cell Phone #:	
Health Care Professional Preparing Form:	Preparer Title:	Preferred Phone #:	Date Prepar

Directions for Completing Form

Completing MOST

- MOST must be completed by a health care professional based on patient preferences and medical indications. **Be sure to document basis for the order in the progress notes of the medical record.** Mode of communication (e.g, in person, by telephone, etc.) also should be documented.
- MOST must be signed by a licensed physician (MD/DO), physician assistant, or nurse practitioner to be valid. Verbal orders are acceptable with follow-up signature by attending physician (MD/DO), physician assistant or nurse practitioner in accordance with facility/community policy.
- The signature of the patient or their representative is required; however, if the patient's representative is not reasonably available to sign the original form, a copy of the completed form with the signature of the patient's representative must be placed in the medical record and "on file" must be written in the appropriate signature field on the front of this form or in the review section below.
- Use of original form is required. Multiple originals of signed MOST forms are acceptable.
- MOST is part of advance care planning, which also may include a living will and health care power of attorney (HCPOA).
- If there is a HCPOA, living will, or other advance directive, a copy should be attached if available.

Reviewing MOST

This MOST must be reviewed at least once a year or when:

- The patient has been transferred from one care setting or care level to another; or
- There is a substantial change in the patient's health status; or
- The patient's treatment preferences change.

If MOST is revised or becomes invalid, draw a line through Sections A – E and write "VOID" in large letters.

Revocation of MOST

This MOST may be revoked by the patient or the patient's representative.

Review of this MOST Form must occur upon change in patient's condition or yearly, whichever is sooner

Review Date	Reviewer and location of review	MD/DO, PA, or NP Signature (required)	Signature of patient or representative (preferred)	Outcome of Review
				☐No Change ☐FORM VOIDED, new form completed ☐FORM VOIDED, no new form
				☐No Change ☐FORM VOIDED, new form completed ☐FORM VOIDED, no new form
				☐No Change ☐FORM VOIDED, new form completed ☐FORM VOIDED, no new form
				☐No Change ☐FORM VOIDED, new form completed ☐FORM VOIDED, no new form
				☐No Change ☐FORM VOIDED, new form completed ☐FORM VOIDED, no new form

SEND FORM WITH PATIENT/RESIDENT WHEN TRANSFERRED OR DISCHARGED

DO NOT ALTER THIS FORM!

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1270

Short Title:	Amend Larceny Laws.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LARCENY STATUTES AND TO CREATE THE CRIMINAL OFFENSES OF THEFT OF INFANT FORMULA AND ORGANIZED RETAIL THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G. S. 14-71 reads as rewritten:

"**§ 14-71. Receiving stolen goods.**

If any person shall receive any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken, whether or not the item has been feloniously stolen or taken, he shall be guilty of a Class H felony, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny."

SECTION 2. G.S. 14-72(a) reads as rewritten:

"(a) Larceny of goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) is a Class H felony. The receiving or possessing of stolen goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this

section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than ~~one thousand dollars ($1,000),~~ five hundred dollars ($500.00), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen."

SECTION 3. G.S. 14-72.1 reads as rewritten:

"**§ 14-72.1 Concealment of merchandise in mercantile establishments.**

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2.

(c) A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag or other product code used to identify the sales prices and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e).

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

(d1) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(d2) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using an exit door erected and maintained to comply

with the requirements of 29 C.F.R. § 1910 Subpart E to exit the premises of a store is guilty of a Class H felony.

(d3) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(e) Punishment. – For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant shall be guilty of a Class 1 misdemeanor. 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 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, the judge may pronounce such other sentence as the judge finds appropriate.

(f) Community Service Period. – If the judgment requires a defendant sentenced under this section to perform a specified number of hours of community service, the community service must be completed within:

(1) 90 days, if the amount of community service required is 72 hours or more;

(2) 60 days, if the amount of community service required is at least 48 hours but less than 72 hours; and

(3) 30 days, if the amount of community service required is at least 24 hours but less than 48 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. Failure to complete the community service requirement within the applicable time limits is a violation of the defendant's probation.

(g) Limitations. – 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 must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period; and

(3) The defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment."

SECTION 4. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-72.7. Theft of infant formula.**

(a) The term "infant formula", as used in this section, has the same meaning as found in 21 U.S.C. § 321(z)."

(b) If any person takes and carries away infant formula valued in excess of one hundred dollars ($100.00), that person is guilty of a Class H felony."

SECTION 5. Chapter 14 of the General Statutes is amended by adding a new article to read:

"Article 16A.

"Organized Retail Theft.

"**§ 14-86.5. Definitions.**

The following definitions apply in this Article:

(1) "Retail property." – Any new article, product, commodity, item, or component intended to be sold in retail commerce.

(2) "Retail property fence." – A person or business that buys retail property knowing or believing that retail property is stolen.

(3) "Theft." – To take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) "Value." – The retail value of an item as advertised by the affected retail establishment, to include all applicable taxes.

"**§ 14-86.6. Organized retail theft.**

(a) Offense: Organized Retail Theft. – A person who conspires with another person to commit theft of retail property from a retail establishment, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration is guilty of a Class G felony.

(b) Offense: Receiving and Possessing Retail Property Obtained by Organized Retail Theft. – A person who receives or possesses with the intent to distribute, any retail property into interstate commerce which has been taken or stolen in violation of this section, is guilty of a Class G felony.

(c) Explicit Representation of Theft of Retail Property. – It is not a defense to a charge of receiving stolen retail property in violation of this section that the retail property was obtained by means other than through the commission of a theft offense if the retail property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(d) Venue. – Venue for criminal actions to enforce the provisions of this section, including criminal actions with respect to each of the offenses included within organized retail theft as defined by this section, that have been committed, attempted, or

conspired to be committed by two or more persons, shall be in any county in which at least one criminal offense has occurred that constitutes part of the organized retail theft offenses. It is the intent of the General Assembly that one State court may have jurisdiction over all the conduct, persons, and retail property which are part of, or are directly related to, each and all of the criminal offenses forming part of the organized retail theft offenses; however, it is discretionary, not mandatory, to bring all criminal actions in one jurisdiction when organized retail theft offenses involve two or more counties.

(e) Forfeiture. – Any person who violates any provision of this section shall forfeit to the State any interest the person has acquired or maintained in violation of this section."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 83

Short Title:	Amend Domestic Crim. Trespass.	(Public)
Sponsors:	Senators Snow; Purcell and Rand.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF DOMESTIC CRIMINAL TRESPASS BY MAKING IT A FELONY FOR A PERSON WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER TO TRESPASS ON PROPERTY THAT IS OPERATED AS A SAFE HOUSE OR HAVEN FOR DOMESTIC VIOLENCE VICTIMS WITHOUT REGARD AS TO WHETHER THE PERSONS COVERED BY THE PROTECTIVE ORDER ARE PRESENT ON THE PREMISES AND TO PROVIDE THAT IT IS AN AGGRAVATING CIRCUMSTANCE FOR FIRST DEGREE MURDER IF A DEFENDANT WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER COMMITS A MURDER ON THE PREMISES OF A SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-134.3 reads as rewritten:

"**§ 14-134.3. Domestic criminal trespass.**

(a) Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

(1) A judicial order of separation;

(2) A court order directing the person charged to stay away from the premises occupied by the complainant;

(3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or

(4) Separate places of residence for the complainant and the person charged.

Except as provided in subsection (b) or (c) of this section, upon conviction, said person is guilty of a Class 1 misdemeanor.

(b) A person convicted of a violation of this section is guilty of a Class G felony if the person is trespassing upon property operated as a safe house or haven for victims of domestic violence and the person is armed with a deadly weapon at the time of the offense.

(c) It is unlawful for a person who is subject to a valid protective order that is enforceable under Chapter 50B of the General Statutes to enter property being operated as a safe house or haven for victims of domestic violence after being forbidden to do so or to remain on the premises after being ordered to leave by the lawful occupant, unless the person enters upon the premises pursuant to a judicial order or written separation agreement that gives the person the right to enter upon the premises for the purpose of visiting with minor children. A person who violates this subsection is guilty of this offense regardless of whether any of the parties protected by the protective order are present on the property. A person who violates this subsection is guilty of a Class H felony."

SECTION 2. G.S. 15A-2001 is amended by adding a new subdivision to read:

"(12) The defendant was the subject of a valid protective order enforceable under Chapter 50B of the General Statutes at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house or haven for victims of domestic violence."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 83

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

S83-ARD-6 [v.1]

Date April 26 ,2007

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

Senator Snow

moves to amend the bill on page 2, lines 19-20 by rewriting the lines to read:

"**SECTION 2.** G.S. 15A-2000(e) is amended by adding a new subdivision to read:".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

SENATE BILL 83:
Amend Domestic Crim. Trespass

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 25, 2007
Introduced by:	Sen. Snow	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 83 would amend existing domestic criminal trespass law to create a Class H felony offense for persons who are subject to a valid protective order to enter onto the premises of a 'safe house' for victims of domestic violence. SB 83 would also amend Article 100 (Capital Punishment) of Chapter 15A (Criminal Procedure Act) to add as an aggravating circumstance the commission of a capital felony by a defendant who was the subject of a valid protective order, on the premises of a safe house for victims of domestic violence.

[As introduced, this bill was identical to S1447, as introduced by Sen. Snow, which is currently in Senate Judiciary I (Civil).]

CURRENT LAW: G.S. 14-134.3 sets forth the criminal offense of domestic criminal trespass. Any person who enters after being forbidden to do so or remains after being told to leave, upon the premises occupied by a present or past spouse or person with whom the defendant lived as if married, shall be guilty of a Class 1 misdemeanor offense. Exception to this offense is provided for persons entering upon the premises pursuant to the terms of a judicial order or a written separation agreement granting right to enter for the purpose of visiting with minor children.

If a person violates this section and the property entered is a safe house for victims of domestic violence and the defendant is armed with a deadly weapon at the time of entry, then they shall be guilty of a Class G felony offense.

BILL ANALYSIS:

Section 1 - would amend G.S. 14-134.3 to create a Class H felony offense for persons who are subject to a valid protective order to enter onto the premises of a 'safe house' for victims of domestic violence after being forbidden to enter onto the premises, or to remain on the premises after being ordered to leave by the lawful occupant. Violation of this subsection would not require that any parties protected by the protective order actually be present on the property for the offense to occur.

An exception to this offense is provided for persons entering upon the premises pursuant to the terms of a judicial order or a written separation agreement granting the person the right to enter for the purpose of visiting with minor children.

Section 2 – would amend Article 100 (Capital Punishment) of Chapter 15A (Criminal Procedure Act) to add as an aggravating the commission of a capital felony by a defendant who was the subject of a valid protective order, and the capital felony was committed on the premises of a safe house for victims of domestic violence.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

BACKGROUND: Aggravating and mitigating circumstances are factors which may be considered by a jury during its deliberation to determine a sentence to impose upon a convicted defendant.

S0083e1-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 189

Committee Substitute Favorable 3/27/07

Third Edition Engrossed 3/29/07

Short Title: Pyrotechnics Permits By Cities. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT A BOARD OF COUNTY COMMISSIONERS MAY AUTHORIZE THE GOVERNING BODY OF A CITY TO AUTHORIZE THE USE OF PYROTECHNICS WITHIN THE CORPORATE LIMITS OF THE CITY AND ISSUE PERMITS FOR THE USE OF PYROTECHNICS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-410(a) reads as rewritten:

"(a) It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the ~~county~~county, or the city if authorized under G.S. 14-413(a1), in which said pyrotechnics are to be exhibited, used or discharged. Written authority from the board of commissioners or city is not required, however, for a concert or public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill, but such exhibition, use, or discharge of pyrotechnics shall be under supervision of experts who have previously secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill. Notwithstanding any provision of this section, it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business. The requirements of G.S. 14-413(b) and G.S. 14-413(c) apply to this section."

SECTION 2. G.S. 14-413 reads as rewritten:

"**§ 14-413. Permits for use at public exhibitions.**

(a) For the purpose of enforcing the provisions of this Article, the board of county commissioners of any ~~county~~county, or the governing board of a city authorized pursuant to subsection (a1) of this section, may issue permits for use in connection with the conduct of concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public ~~exhibitions,~~celebrations, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. Provided that no such permit shall be required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill.

(a1) For the purpose of enforcing the provisions of this Article, a board of county commissioners may authorize the governing body of any city in the county to issue permits pursuant to the provisions of this Article for pyrotechnics to be exhibited, used, or discharged within the corporate limits of the city for use in connection with the conduct of concerts or public exhibitions. The board of county commissioners shall adopt a resolution granting the authority to the city, and it shall remain in effect until withdrawn by the board of county commissioners adopting a subsequent resolution withdrawing the authority. If a city lies in more than one county, the board of county commissioners of each county in which the city lies must adopt an authorizing resolution. If any county in which the city lies withdraws the authority of the city to issue permits for the use of pyrotechnics, the authority of the city to issue permits for the use of pyrotechnics will end, and all counties within which the city lies must resume their authority to issue the permits.

(b) For any indoor use of pyrotechnics at a concert or public exhibition, the board of commissioners or the governing body of an authorized city may not issue any permit unless the local fire marshal or the State Fire Marshal (or in the case of The University of North Carolina or the University of North Carolina at Chapel Hill it may not authorize such concert or public exhibition unless the State Fire Marshal) has certified that:

(1) Adequate fire suppression will be used at the site.

(2) The structure is safe for the use of such pyrotechnics with the type of fire suppression to be used.

(3) Adequate egress from the building is available based on the size of the expected crowd.

(c) The requirements of subsection (b) of this section also apply to any city authorized to grant pyrotechnic permits by local act and to the officer delegated the power to grant such permits by local act."

SECTION 3. Any local act granting authority to a city to grant permission or a permit for pyrotechnics to be exhibited, used or discharged at concerts or public exhibitions pursuant to G.S. 14-410 or G.S.14-413 is repealed one year from the effective date of this act.

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

HOUSE BILL 189:
Pyrotechnics Permits By Cities

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 26, 2007
Introduced by:	Reps. Allen, Bryant, Wray	**Summary by:**	Jennifer McGinnis
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 189 would amend G.S. 14-410(a) and G.S. 14-413 to provide authority to boards of county commissioners to authorize cities in the county to issue permits for pyrotechnic displays at concerts and public exhibitions.***

CURRENT LAW: Current law authorizes only counties to issue pyrotechnics display permits.

BILL ANALYSIS: The bill would a board of county commissioners to adopt a resolution allowing a city in the county to assume the authority to issue pyrotechnics display permits. If a city lies in more than one county, all the counties must adopt a similar resolution. The authority may be withdrawn by a subsequent resolution. If any county in which a multiple county city lies withdraws the authority, then the authority for the city to issue permits ends.

In addition, the bill would provide that any local act granting authority to a city to grant permission or a permit for pyrotechnics to be exhibited, used, or discharged at concerts or public exhibitions pursuant to G.S. 14-410 or G.S.14-413 is repealed one year from the effective date of this act.

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

Steven Rose, counsel to House Judiciary I, substantially contributed to this summary.

H0189e3-SMRI

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 1, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 944	Change Penalty for Hit and Run Violations.	Senator Dalton
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, May 1, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 944	Change Penalty for Hit and Run Violations.	Senator Dalton
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 1, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on May 1, 2007, with seventeen members present. Senator Hartsell introduced pages Emerson Voss, Hana Doran, Chelsea Privette and Allison Ellis and thanked them for their service.

SB 940 (Legislative Access to Retirement Databases.) Senator Dorsett was recognized to explain the bill. Mr. Stanley Moore, of the Legislative Fiscal Research Division, and Mr. Michael Williamson, Director of the State Retirement Division, spoke on the bill. Questions from Senators East, Goodall, Allran, Bingham, Dannelly and Apodaca were answered by Mr. Moore and Mr. Williamson. Senator Bingham moved for a favorable report. As discussion continued, Senator Dorsett requested that the bill be withdrawn form today's meeting and continued at a later meeting.

SB 944 (Change Penalty for Hit and Run Violations.) Senator Dalton was recognized to explain the bill. Questions from Senators Allran, East and Dannelly were answered by Senator Dalton and Mr. Ben Popkin, Staff Attorney. Senator East moved for a favorable report with a referral to Appropriations, all voted and the motion carried.

SB 1359 (Red Light Exception for Motorcycles.) Senator Hartsell noted there was a Proposed Committee Substitute and called for a motion to accept it for purposes of discussion. Senator East so moved, all voted and the motion carried. Senator Allran was then recognized to explain the bill. Senator Allran answered the question from Senators Jones, Dannelly, Goodall, Kerr and Berger. Ms. Janice MacKay, representing the Bikers Association, spoke on the bill. Senator Allran decided to continue the bill at a later meeting.

SB 1046 (Advance Directives/Health Care Pwr. Atty. –AB) Senator Hartsell noted there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion when the bill was taken up at the Thursday, May 3rd, meeting. Senator Goodall so moved, all voted and the motion carried.

SB 1270 (Amend Larceny Laws) Senator Hartsell noted there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion when the bill was taken up at the Thursday, May 3rd, meeting. Senator Goodall so moved, all voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 01, 2007

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

FAVORABLE

S.B. **944** Change Penalty for Hit and Run Violations.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

Jud. II — 5-1-07

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Elliot	NCRTC
Kimberly Nichols	NC Conf. of District Attorneys
Jami Fitzgerald	NC Family Policy Council
Knox Pinson	Wimble and Smith, PA
Martin L Williamson MD	Doctor of Day - NCMS
Chip Baggett	NCMS
Elizabeth Wickham	Life Tree
Carl Goodman	OSP
Chad Essick	Poyner + Spruill, LLP
Paul Todd	Inform
Wayne Lancaster	Staff

VISITOR REGISTRATION SHEET

Jud. II — 5-1-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Williamson	Retirement Systems
Starla McKinney	Retirement Systems
Joe White	Retirement Systems
T.J Wasilosei	USA/ABATE of NC/NC BIKE-PAC
Janice Mackay	WAKE CTY (Billers USA)
Ted Fellers M.D.	N.C. Med. Soc.
JIM CREAMER	BLANCH TACKABERRY COMBS & MATTHEWS
Melanie Phelps	NC Medical Society
STEVE KEENE	NC MEDICAL SOCIETY
Thomas Goldsmith	MD
Elizabeth Dalton	NCRMA

VISITOR REGISTRATION SHEET

Jud. II — 5-1-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Whitacre	100 - Daily Bulletin
Sam Sands	WCSJR2
Eric Hines	Intern Rep. Martin
Rose McCreery	Lifetree
Joanne Stevens	Nursing

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 940

Short Title:	Legislative Access to Retirement Databases.	(Public)
Sponsors:	Senators Dorsett; Albertson, Cowell, Dannelly, Malone, and Purcell.	
Referred to:	Judiciary II (Criminal).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE RETIREMENT SYSTEM DIVISION OF THE DEPARTMENT OF STATE TREASURER TO PROVIDE DIRECT ACCESS TO INFORMATION REQUESTED BY THE FISCAL RESEARCH DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-32.01 reads as rewritten:

"**§ 120-32.01. Information to be supplied.**

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal Research, and Bill Drafting Divisions any information or records requested by them. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and the Fiscal Research Division access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division.

(c) Notwithstanding subsection (a) of this section or any other law relating to privacy of personnel records, the Retirement System Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to any information or records requested by them, including any database or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission."

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

SENATE BILL 940:
Legislative Access to Retirement Databases

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Dorsett	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 940 would require the Retirement System Division (RSD) of the Department of State Treasurer (DST) to provide direct online read-only access to any information or records, including any database or information stored electronically (regardless of the medium for storage) requested by the Fiscal Research Division of the General Assembly, notwithstanding any other law concerning privacy of personnel records.***

CURRENT LAW: All State departments, agencies, and institutions must furnish the Legislative Services Office and the Research, Fiscal Research (FRD), and Bill Drafting Divisions of the General Assembly any information or records requested by them. Under current law, each State agency must give the designated entities within the General Assembly **"access to any data base"** or information stored electronically (regardless of the medium for storage) except when accessibility is prohibited by a federal law or State statute.

BACKGROUND: In May 2006 FRD staff requested that RSD staff provide them with online access to retirement data. RSD subsequently denied FRD direct access to the database(s) in question, and based upon internal departmental policy, indicated that RSD staff would provide information to FRD only upon written request.

BILL ANALYSIS: The bill would require RSD to provide FRD and the other designated entities within the General Assembly direct online read-only access to any information or records, including any database or information stored electronically (regardless of the medium for storage), notwithstanding any other law concerning privacy of personnel records

EFFECTIVE DATE: This bill would be effective when it becomes law.

S0940e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 944

Short Title:	Change Penalty for Hit and Run Violations. (Public)
Sponsors:	Senator Dalton.
Referred to:	Judiciary II (Criminal).

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE LEAVING THE SCENE OF AN ACCIDENT WHERE A PERSON SUFFERS SERIOUS BODILY INJURY A CLASS F FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-166 reads as rewritten:

"**§ 20-166. Duty to stop in event of ~~accident or collision~~ a crash; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.**

(a) The driver of any vehicle who knows or reasonably should know:

(1) That the vehicle which he or she is operating is involved in ~~an accident or collision~~a crash; and

(2) That the ~~accident or collision~~crash has resulted in serious bodily injury, as defined in G.S. 14-32.4, or death to any person;

shall immediately stop his or her vehicle at the scene of the ~~accident or collision.~~crash. The driver shall remain with the vehicle at the scene of the ~~accident~~crash until a law-enforcement officer completes the investigation of the ~~accident or collision~~crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the ~~accident~~crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as a Class ~~H~~ F felony.

(a1) The driver of any vehicle who knows or reasonably should know:

(1) That the vehicle which he or she is operating is involved in a crash; and

(2) That the crash has resulted in injury;

shall immediately stop his or her vehicle at the scene of the crash. The driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the crash scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as a Class H felony.

(b) In addition to complying with the ~~requirement of subsection (a)~~requirements of subsections (a) and (a1) of this section, the driver as set forth in ~~subsection (a)~~subsections (a) and (a1) shall give his or her name, address, driver's license number and the license plate number of the vehicle to the person struck or the driver or occupants of any vehicle collided with, provided that the person or persons are physically and mentally capable of receiving such information, and shall render to any person injured in such ~~accident or collision~~crash reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person. A violation of this subsection is a Class 1 misdemeanor.

(c) The driver of any vehicle, when ~~he or she~~the driver knows or reasonably should know that the vehicle which ~~he or she~~the driver is operating is involved in ~~an accident or collision, which accident or collision, results:~~a crash which results:

(1) Only in damage to property; or

(2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop the vehicle at the scene of the ~~accident or collision.~~crash. If the ~~accident~~crash is a reportable ~~accident,~~crash, the driver shall remain with the vehicle at the scene of the ~~accident~~crash until a law enforcement officer completes the investigation of the ~~accident~~ crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the ~~accident~~crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for

a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.

(c1) In addition to complying with the requirement of subsection (c) of this section, the driver as set forth in subsection (c) shall give his or her name, address, driver's license number and the license plate number of his vehicle to the driver or occupants of any other vehicle involved in the ~~accident or collision~~crash or to any person whose property is damaged in the ~~accident or collision.~~crash. If the damaged property is a parked and unattended vehicle and the name and location of the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided the driver thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing the information in a conspicuous place upon or in the damaged vehicle. If the damaged property is a guardrail, utility pole, or other fixed object owned by the Department of Transportation, a public utility, or other public service corporation to which report cannot readily be made at the scene, it shall be sufficient if the responsible driver shall furnish the information required to the nearest peace officer or make written report thereof containing the information by U.S. certified mail, return receipt requested, to the North Carolina Division of Motor Vehicles within five days following the collision. A violation of this subsection is a Class 1 misdemeanor.

(c2) Notwithstanding subsections ~~(a)~~(a), (a1), and (c) of this section, if ~~an accident or collision~~a crash occurs on a main lane, ramp, shoulder, median, or adjacent area of a highway, each vehicle shall be moved as soon as possible out of the travel lane and onto the shoulder or to a designated accident investigation site to complete the requirements of this section and minimize interference with traffic if all of the following apply:

(1) The ~~accident or collision~~crash has not resulted in injury or death to any person or the drivers did not know or have reason to know of any injury or death.

(2) Each vehicle can be normally and safely driven. For purposes of this subsection, a vehicle can be normally and safely driven if it does not require towing and can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway.

(d) Any person who renders first aid or emergency assistance at the scene of a motor vehicle ~~accident~~ crash on any street or highway to any person injured as a result of the accident, shall not be liable in civil damages for any acts or omissions relating to the services rendered, unless the acts or omissions amount to wanton conduct or intentional wrongdoing.

(e) The Division of Motor Vehicles shall revoke the drivers license of a person convicted of violating subsection (a) or (a1) of this section for a period of one year, unless the court makes a finding that a longer period of revocation is appropriate under the circumstances of the case. If the court makes this finding, the Division of Motor Vehicles shall revoke that person's drivers license for two years. Upon a first conviction

only for a violation of subsection ~~(a)~~(a1) of this section, a trial judge may allow limited driving privileges in the manner set forth in G.S. 20-179.3(b)(2) during any period of time during which the drivers license is revoked."

SECTION 2. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 944:
Change Penalty for Hit and Run Violations

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Dalton	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 944 would amend the law relating to leaving the scene of an accident to remove reference to the term "accident or collision" and substitute the word "crash", and to increase the penalty for violation of this provision, if the crash results in serious bodily injury or death, from a Class H to a Class F felony. The act would become effective October 1, 2007.***

[As introduced, this bill was identical to H993, as introduced by Rep. Moore, which is currently in House Judiciary II .]

CURRENT LAW:

Under current law, a driver whose vehicle is involved in an accident that causes injury or death is required to stop and remain at the scene of the accident until a law enforcement officer completes the investigation or authorizes the driver to leave the scene.

In 2005, G.S. 20-166(a) was amended to prohibit the driver of a vehicle that is involved in an accident from facilitating, allowing or agreeing to the removal of the vehicle from the scene of an accident that results in injury or death prior to law enforcement completing the investigation or consenting to the removal.

Violation of this provision is a Class H felony and also results in the mandatory revocation of the person's driver's license for 1 to 2 years. A judge may order a limited driving privilege during this period, after conviction of a first offense.

BILL ANALYSIS:

Senate Bill 944 would remove reference to the words "accident or collision" in this section of law, and substitute the word "crash". The Motor Vehicle Law does not define the terms "accident", "collision" or "crash".

The bill also amends the law to create two levels of violation. In the first level, if a driver leaves the scene or removes a vehicle from the scene prior to completion of the investigation by law enforcement and the crash results in serious bodily injury or death, the driver is guilty of a Class F felony.

"'Serious bodily injury' is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." (G.S. 14-32.4)

In the second level, if a driver leaves the scene or removes a vehicle from the scene prior to completion of the investigation by law enforcement and the crash results in injury, the driver is guilty of a Class H felony. In either case, the driver would be subject to mandatory revocation of his or her driver's license for 1 to 2 years. A judge may order a limited driving privilege for first offenders of the Class H offense.

EFFECTIVE DATE: This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

Karen Cochrane-Brown, counsel to House Judiciary III, substantially contributed to this summary. *S0944e1-SMRD*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1046

Short Title:	Advance Directives/Health Care Pwr. Atty.-AB	(Public)
Sponsors:	Senators Hartsell; Forrester, Purcell, and Soles.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; AND TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life-sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending ~~physician. In this case, G.S. 90-322 does not apply.~~physician, as G.S. 90-322 shall not apply in such case."

SECTION 2.(a) G.S. 32A-16(1) reads as rewritten:

"(1) "Disposition of remains" means the decision to bury or cremate human ~~remains as~~ remains, as human remains are defined in G.S. ~~90-210.121(17).~~90-210.121, and, subject to G.S. 32A-19(b), funeral arrangements relating to burial or cremation."

SECTION 2.(b) G.S. 32A-16(1a) reads as rewritten:

"(1a) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or

mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section."

SECTION 2.(c) G.S. 32A-16(3) and (4) read as rewritten:

"(3) "Health care power of attorney" means a written ~~instrument,~~instrument that substantially meets the requirements of this Article, is signed in the presence of ~~two qualified witnesses, and acknowledged before a notary public,~~ at least one qualified witness, and is acknowledged before a notary public (who need not be a qualified witness), pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal.

(4) ~~"Life-sustaining procedures"~~ "Life-prolonging measures" are those forms of care or treatment which only serve to ~~artificially prolong~~prolong artificially the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain."

SECTION 2.(d) G.S. 32A-16(6) reads as rewritten:

"(6) "Qualified witness" means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the

giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"**§ 32A-24. Reliance on health care power of attorney; defense.**

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 36A-25, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

(NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.)

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of a attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent broad powers to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State.

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ (Physician)
2. _____ (Physician)

If I have not designated a physician, or no physician(s) named above are reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a trustee or successor trustee under any trust agreement of which I am a grantor or trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce

my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration. In exercising the authority to make health care decisions on my behalf, my health care agent:

_____(Initial) shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____(Initial) shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition.

_____(Initial) B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition

of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the

scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____(Initial) donate any needed organs or parts; or

_____(Initial) donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____(Initial) donate my body for anatomical study if needed

_____(Initial) In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be guardian of my person, to serve without bond of security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my

health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This health care power of attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of signer)

_____

(type/print name of witness)

Date _____ _____

(Official Seal) Signature of Notary Public

_____, Notary Public

Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or his representative has the fundamental right to control the decisions relating to the rendering of his own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or his representative may exercise these rights.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) As used in this Article the term:

(1) "Declarant" means a person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section;

(1a) 'Declaration' means any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section;

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(3) "Physician" means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina;

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a~~

~~sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician, if another physician is reasonably available;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are~~ That has been signed by the declarant in the presence of at least one witness who believes the declarant to be of sound mind and who states that he (i) is not related within the third degree to the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have a reasonable expectation that ~~they~~ he would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group care home in which the declarant resides,~~ is not the attending physician, or a licensed health care provider who is a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides, and (iv) ~~do~~ does not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) ~~below.~~ of this section."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future about whether you want your health care providers to apply life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family

members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State.

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply if my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____(Initial) I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____(Initial) I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____(Initial) I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____(Initial) may withhold or withdraw life-prolonging measures.

_____(Initial) shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

(NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.)

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____(Initial) I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.)

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____(Initial) Follow Advance Directive: This Advance Directive will override instructions my health care agent gives about prolonging my life.

_____(Initial) Follow Health Care Agent: My health care agent has authority to override this Advance Directive.

(NOTE; DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.)

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this

instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I am competent, I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarent, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) nor an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of principal)

_____

(type/print name of witness)

Date _____ _____

Signature of Notary Public

(Official Seal)

_____, Notary Public

Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to~~

~~the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no

duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1) It is determined by the attending physician that the person's present condition is:~~

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

~~c. Diagnosed as a persistent vegetative state; and~~

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;

~~(4) The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children at least 18 years of age; or

(6) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) ~~A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~

(1) Consent that is evidenced in writing, and that is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption may be rebutted only upon proof that such consent was obtained by fraud, deception, or misrepresentation of a material fact.

(2) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

a. A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

b. A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

c. An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or

Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

d. The patient's spouse;

e. A majority of the patient's reasonably available parents and children at least 18 years of age; or

f. An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the persons listed under this subdivision is available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is conformation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"**§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.**

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's

representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file."

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form, and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; the name and telephone number of the physician, physician assistant, or nurse practitioner authorizing the order by signing the form; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e. the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; a signature clock for the patient or the patient's representative to sign if practicable; effective date of the form and review dates; and an advisory that the MOST may be revoked by the patient or the patient's representative. The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of extraordinary care pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST

not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15. G.S. 130A-420 reads as rewritten:

"**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

~~(1) The surviving spouse.~~

~~(2) A majority of the surviving children.~~

~~(3) The surviving parents.~~

~~(4) A majority of the surviving siblings.~~

~~(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.~~

~~(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.~~

(1a) The health care agent under a health care power of attorney giving the health care agent that authority to the extent provided in G.S. 32A-19(b).

(2a) The personal representative of the estate of the decedent, or the person named executor in a will prior to appointment.

(3a) The surviving spouse.

(4a) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(5a) The surviving parents.

(6a) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(7) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(8) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(9) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 16.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 16.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16.(c) G.S. 122C-72(1) reads as rewritten:

"(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of ~~two qualified witnesses who believe~~ at least one qualified witness who believes the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable."

SECTION 17. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 18. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 19.(a) G.S. 90-210.63 is amended by adding the following new subsection to read:

"(c) The following persons, in the priority listed below, shall have the right to serve as the legal representative of the preneed contract beneficiary:

(1) The health care agent under a health care power of attorney for the preneed contract beneficiary with authority to make funeral decisions to the extent provided in G.S. 32A-19(b);

(2) The personal representative of the estate of the preneed contract beneficiary, or the person named executor in a will prior to appointment; or

(3) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death:

a. The spouse of the preneed contract beneficiary;

b. Any adult child or stepchild of the preneed contract beneficiary;

c. Any parent of the preneed contract beneficiary;

d. Any adult sibling of the preneed contract beneficiary; or

e. A guardian of the person of the preneed contract beneficiary at the time of the preneed contract beneficiary's death."

SECTION 19.(b) G.S. 90-210.124(a) and 90-210.124(a)(1) read as rewritten:

"(a) The following ~~person,~~persons in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney giving the health care agent that authority to the extent provided in ~~Article 3 of Chapter 32 of the General Statues,~~ G.S. 32A-19(b), pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual."

SECTION 20. G.S. 90-321(e) reads as rewritten:

"(e) A ~~The above~~ declaration may be revoked by the declarant, in writing or in any manner by which ~~he~~ the declarant is able to communicate his or her intent to revoke in a clear and consistent manner, without regard to his or her mental or physical condition. ~~Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~ A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration."

SECTION 21. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1046
PROPOSED COMMITTEE SUBSTITUTE S1046-PCS35363-RC-21

Short Title: Advance Directives/Health Care Pwr. Atty.-AB (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; AND TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life-sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending ~~physician. In this case, G.S. 90-322 does not apply.~~physician, as G.S. 90-322 shall not apply in such case."

SECTION 2. G.S. 32A-16 reads as rewritten:

"**§ 32A-16. Definitions.**

~~As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:~~The following definitions apply in this Article:

(1) ~~"Disposition of remains" means the~~ Disposition of remains. – The decision to bury or cremate human ~~remains as~~ remains, as human

remains are defined in G.S. ~~90-210.121(17).~~90-210.121, and, subject to G.S. 32A-19(b), arrangements relating to burial or cremation.

(1a) ~~"Health care" means any~~ Health care. – Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section.

(2) ~~"Health care agent" means the~~ Health care agent. – The person appointed as a health care attorney-in-fact.

(3) ~~"Health care power of attorney" means a~~ Health care power of attorney. – A written ~~instrument,~~instrument that substantially meets the requirements of this Article, that is signed in the presence of ~~two qualified witnesses, and acknowledged before a notary public,~~ at least one qualified witness, and is acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal. The notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any group-care home in which the principal resides.

(4) ~~"Life-sustaining procedures" are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.~~Life-prolonging measures. – Medical procedures or interventions which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplant a vital function, including mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment. Life-prolonging measures to not include care necessary to provide comfort or to alleviate pain.

(5) ~~"Principal" means the~~ Principal. – The person making the health care power of attorney.

(6) ~~"Qualified witness" means a~~ Qualified witness. – A witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he or she (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he or she would be entitled to any portion of the estate

of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

(7) ~~"Advance instruction for mental health treatment" or "advance instruction" means a written instrument as defined in G.S. 122C-72(1) pursuant to which the principal makes a declaration of instructions, information, and preferences regarding mental health treatment.~~Advance instruction for mental health treatment or advance instruction. – As defined in G.S. 122C-72(1).

(8) ~~"Mental health treatment" means the~~ Mental health treatment. – The process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" ~~includes, but is not limited to,~~ includes electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"**§ 32A-24. Reliance on health care power of attorney; defense.**

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent ***broad powers*** *to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *a witness and a notary public are present to watch you sign it. You then should give a copy to*

your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: http://www.nclifelinks.org/ahcdr/

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ *(Physician)*

2. _____ *(Physician)*

If I have not designated a physician, or no physician(s) named above are reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a trustee or successor trustee under any trust agreement of which I am a grantor or trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

_____ shall NOT have the authority to withhold artificial nutrition
(Initial) (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____ shall NOT have the authority to withhold artificial hydration
(Initial) (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

_____ B. Limitations Concerning Health Care Decisions. In exercising
(Initial) the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ C. Limitations Concerning Mental Health Decisions. In
(Initial) exercising the authority to make mental care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

(Initial)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

(Initial)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____ donate any needed organs or parts; or

(Initial)

_____ donate only the following organs or parts:

(Initial)

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____ donate my body for anatomical study if needed

(Initial)

_____

(Initial)

In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be guardian of my person, to serve without bond of security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This health care power of attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

_____
(type/print name of witness)

Date _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health

care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or ~~his~~ the patient's representative has the fundamental right to control the decisions relating to the rendering of ~~his~~ the patient's own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or ~~his~~ the patient's representative may exercise these rights.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) ~~As used in this Article the term:~~The following definitions apply in this Article:

(1) ~~"Declarant" means a~~ Declarant. – A person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section.

(1a) Declaration. Any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section.

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

(3) ~~"Physician" means any~~ Physician. – Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North ~~Carolina;~~Carolina.

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician, if another physician is reasonably available;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his~~

~~condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are~~ That has been signed by the declarant in the presence of at least one witness who believes the declarant to be of sound mind and who states that he or she (i) is not related within the third degree to the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have a reasonable expectation that ~~they~~ he or she would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group-care home in which the declarant resides.~~is not the attending physician, or a licensed health care provider who is a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides, and (iv) ~~do~~ does not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection ~~(d) below.~~(d1) of this section. A notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future about whether you want your health care providers to apply life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *a witness and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/.

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply if my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____ *(Initial)* I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____ *(Initial)* I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____ *(Initial)* I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____ *(Initial)* may withhold or withdraw life-prolonging measures.

_____ *(Initial)* shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____ *(Initial)* I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.

_____ *(Initial)* I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.

_____ *(Initial)* I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____ *(Initial)* Follow Advance Directive: This Advance Directive will **override** instructions my health care agent gives about prolonging my life.

_____ *(Initial)* Follow Health Care Agent: My health care agent has authority to **override** this Advance Directive.

NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood or marriage, and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act, if the declarant died on this date without a will. I also state that I am not the declarant's attending physician, nor a licensed health care provider who is (1) an employee of the declarant's attending physician, (2) nor an employee of the health facility in which the declarant is a patient, or (3) an employee of a nursing home or any group care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

_____
(type/print name of witness)

Date _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this

section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration that expresses a desire of the declarant that life prolonging measures not be used if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1)~~ ~~It is determined by the attending physician that the person's present condition is:~~

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

~~c. Diagnosed as a persistent vegetative state; and~~

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;

~~(4) The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age; or

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age.

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is reasonably available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) ~~A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~

(1) Consent that is evidenced in writing, and that is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption may be rebutted only upon proof that such consent was obtained by fraud, deception, or misrepresentation of a material fact.

(2) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

a. A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

b. A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

c. An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

d. The patient's spouse;

e. A majority of the patient's reasonably available parents and children who are at least 18 years of age;

f. A majority of the patient's reasonably available siblings who are at least 18 years of age; or

g. An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the persons listed under this subdivision is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is conformation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of

Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"**§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.**

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file."

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form, and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; the name and telephone number of the physician, physician assistant, or nurse practitioner authorizing the order by signing the form; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e. the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; a signature block for the patient or the patient's representative to sign if practicable; effective date of the form and review dates; and an advisory that the MOST may be revoked by the patient or the patient's representative. The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to

consent to the withholding of extraordinary care pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15. G.S. 130A-420 reads as rewritten:

"**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

~~(1) The surviving spouse.~~

~~(2) A majority of the surviving children.~~

~~(3) The surviving parents.~~

~~(4) A majority of the surviving siblings.~~

~~(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.~~

~~(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.~~

(1a) The health care agent under a health care power of attorney giving the health care agent that authority to the extent provided in G.S. 32A-19(b).

(2a) The personal representative of the estate of the decedent, or the person named executor in a will prior to appointment.

(3a) The surviving spouse.

(4a) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(5a) The surviving parents.

(6a) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(7) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(8) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(9) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 16.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority

by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 16.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16.(c) G.S. 122C-72(1) reads as rewritten:

"(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of ~~two qualified witnesses who believe~~ at least one qualified witness who believes the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable."

SECTION 17. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 18. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 19.(a) G.S. 90-210.63 is amended by adding the following new subsection to read:

"(c) The following persons, in the priority listed below, shall have the right to serve as the legal representative of the preneed contract beneficiary:

(1) The health care agent under a health care power of attorney for the preneed contract beneficiary with authority to make funeral decisions to the extent provided in G.S. 32A-19(b);

(2) The personal representative of the estate of the preneed contract beneficiary, or the person named executor in a will prior to appointment; or

(3) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death:

a. The spouse of the preneed contract beneficiary;

b. Any adult child or stepchild of the preneed contract beneficiary;

c. Any parent of the preneed contract beneficiary;

d. Any adult sibling of the preneed contract beneficiary; or

e. A guardian of the person of the preneed contract beneficiary at the time of the preneed contract beneficiary's death."

SECTION 19.(b) G.S. 90-210.124(a) and 90-210.124(a)(1) read as rewritten:

"(a) The following ~~person,~~persons in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney giving the health care agent that authority to the extent provided in ~~Article 3 of Chapter 32 of the General Statues,~~ G.S. 32A-19(b), pursuant to a preneed funeral

contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual."

SECTION 20. This act is effective when it becomes law.

SENATE BILL 1046:
Advance Directives/Health Care Pwr. Atty.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S1046-PCS35363-RC-21		

SUMMARY: Senate Bill 1046 amends laws related to Health Care Powers of Attorney, Advance Directives/Living Wills, and Guardianship statutes to allow individuals to make clear choices about their medical treatment, especially end of life treatments.

CURRENT LAW: Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. Article 3 of Chapter 32A authorizes health care powers of attorney and was enacted in 1991. Part 2 of Article 3 of Chapter 122C authorizes an instruction for mental health treatment and was enacted in 1997. There are also scattered statutes related to the authority of health care agents, especially in the event there is also a court appointed guardian. In general, when a person has executed both a Health Care Power of Attorney and a Living Will, the terms of the Living Will control over the health care agent designation.[1] A similar situation exists when there is a health care agent, and a court appoints a guardian.

BILL ANALYSIS:

Section 1 amends G.S. 32A-15(c) to provide that either a living will or a health care power of attorney (HCPOA) may provide that the health care power of attorney takes precedence over a living will, and that provision will not create a conflict between the two documents. *Under current law, it is not clear whether this situation does create a conflict. However, because current law gives a living will precedence over a HCPOA in the event of a conflict, it could be argued that the living will always "trumps" the HCPOA.*

This section also makes it clear that if a living will does not speak directly to a medical condition and the HCPOA does, the HCPOA controls.

Section 2 amends the definitions related to HCPOAs. It provides that the execution of a HCPOA need only be witnessed by one qualified witness. *Current law requires two qualified witnesses.* It also specifies that the notary may be an employee of the attending physician or employed by the health care facility where the principal is being treated.

Also changes the terminology from "life-sustaining procedures" to "life-prolonging measures". These are medical procedures or interventions which, in the judgment of the attending physician, serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function.

Section 3 replaces terminology, but also makes it clear that if a health care agent has the authority to made decisions regarding the disposition of the principal's remains, those decisions are limited to incurring reasonable costs and does not give the health care agent broader authority over the principal's estate or financial affairs.

Section 4 creates a procedure by which a guardian of the principal may petition a court to suspend the authority of a health care agent during the term of the guardianship. The court may suspend the agent's

[1] G.S. 32A-15(c).

authority for good cause shown, but must specify whether the guardian must act consistently with the HCPOA. Also creates immunity for a health care provider who relies upon a HCPOA until the provider receives actual knowledge of the court's order suspending the HCPOA.

Section 5(a) changes the terminology to be consistent with new definitions. **Section 5(b)** adds a new subsection to G.S. 32A-24 to clarify that a health care provider may rely upon the authority of a health care agent contained in a HCPOA, whether the HCPOA is executed in another jurisdiction, executed under the previous statutory form, or does not use the statutory form but does comply with applicable laws. The health care provider may rely upon the HCPOA until receiving actual notice of its revocation.

Section 6(a) repeals the current statutory HCPOA. **Section 6(b)** creates a new HCPOA statutory form, G.S. 3A-25.1(a). The form attempts to clarify the consequences of certain choices by the principal and also points out that certain provisions purporting to create limitations will not be effective unless the principal specifies the limitations. Also provides that use of the statutory form is optional, and is a nonexclusive method for creating a HCPOA. Subsection (b) of new G.S. 32A-25.1 provides that the new statutory form does not affect the use of previously executed HCPOAs.

Section 7 creates G.S. 32A-27 which provides that a HCPOA executed in another jurisdiction shall be valid in North Carolina if it appears it was executed in compliance with the law of the other state or the laws of North Carolina.

Section 8 allows a guardian of the person or legal guardian to petition the Clerk of Court to suspend the authority of a health care agent. It also specifies that the guardian does not have the authority to revoke a Living Will.

Section 9 clarifies that a health care agent has the right to make health care decisions for a ward for whom a legal guardian or guardian of the person has been appointed.

Section 10 revises terminology.

Section 11(a) amends G.S. 90-321 regarding Advance Directives or Living Wills. It defines a "Declaration" as any signed, witnessed, dated and notarized document that otherwise meets the requirements of the Article. These requirements allow for only one witness (*current law requires two witnesses)*, but that person must not have any interest in the declarant's estate or be an employee of the health care provider. It repeals the definition of "extraordinary means" and substitutes "life-prolonging measures" as that term is defined in the HCPOA statutes. It also repeals the term "persistent vegetative state".

It amends G.S. 90-321(b) and (c) to allow an attending physician to withhold life-prolonging measures if the declarant has properly executed a living will, the attending physician determines that the declarant:

- has incurable or irreversible condition that will result in the declarant's death in a relatively short period of time;
- is unconscious and, to a high degree of medical certainty, will never regain consciousness; or
- suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and, to a high degree of medical certainty, is not reversible.

AND

- The declarant's condition is confirmed by another physician, if one is reasonably available.

AND

- The Living Will states that the declarant understands that the document authorizes the attending physician to withhold life-prolonging measures.

Current law allows an attending physician to withhold artificial nutrition or hydration pursuant to a Living Will if: the declarant is terminally ill or diagnosed as being in a persistent vegetative state and these medical conditions are confirmed by a second medical opinion. The Declaration must be in writing, signed by the declarant and two witnesses, and notarized.

Section 11(b) repeals the current statutory form for Living Wills

Section 11(c) creates a new statutory form for Living Wills that reflects the statutory changes.

Sections 11(d) and (e) clarifies that a Declaration may be revoked orally or in writing without regard to a declarant's mental or physical condition. *Prior law made a revocation effective only upon communication of the revocation to the attending physician by the declarant or an individual acting on behalf of the declarant.* It provides immunity to a health care provider who acts in accordance with a revoked declaration unless the health care provider has actual knowledge of the revocation. Also extends the protections to a Declaration that is executed in another jurisdiction, and one that does not conform to the statutory form. It also prohibits a health care agent from revoking a declaration unless the HCPOA explicitly grants the agent this authority.

Section 11(d) creates a new subdivision (k) for G.S. 90-321 to allow a physician to decline to honor a Declaration if doing so would violate the physician's conscience or the conscience-based policy of the facility where the declarant is being treated. It also allows a physician to decline to honor a Declaration if after reasonable inquiry, there are reasonable grounds to question the genuineness or validity of the document.

Section 12 amends G.S. 90-322 regarding situations where life-prolonging measures may be withheld in the absence of a Declaration. If the attending physician determines that:

- a patient has an incurable or irreversible condition that will lead to that person's death in a relatively short period of time, or
- the patient is unconscious and unlikely to regain consciousness.

AND

- That condition is confirmed by another physician.

AND

- A bodily function could be restored or is being sustained by life-prolonging measures,

THEN

The life-prolonging measures may be withheld or discontinued at the direction and under the supervision of the attending physician with the concurrence of the following individuals, in descending order:

- A health care agent appointed under a valid HCPOA, unless that authority has been suspended by a court in favor of a court appointed guardian of the person or general guardian, in which case the court appointed guardian takes priority.
- An attorney-in-fact with powers to make health care decisions for the principal.
- The patient's spouse.

- A majority of the patient's reasonably available parents and children who are at least 18 years of age.
- A majority of the patient's reasonably available siblings who are at least 18 years of age.
- An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.
- If none of these are reasonably available, the attending physician may withhold or discontinue life-prolonging measures.

Current law gives priority decision-making to the following in descending order: a health care agent, then a guardian of the person, then the person's spouse, then a majority of the relatives of the first degree.

Section 13 amends G.S. 90-21.13 regarding informed consent to medical treatment under the medical malpractice provisions of the statutes. It sets out, in descending order, the persons who may give valid consent to medical treatment if the patient is comatose or otherwise lacks the capacity to make or communicate health care decisions. The same individuals are listed in the same order as those in Section 12 regarding the withholding or discontinuance of life-prolonging measures.

Current law provides that the patient's spouse, parent, guardian, or nearest relative may give the consent. It does not prioritize among those individuals.

Section 14 amends G.S. 90-21.17 regarding do not resuscitate orders (DNRs). It adds to the statutes Medical Order for Scope of Treatment (MOST). A MOST could be issued by a physician pursuant to the same consents necessary for a DNR. However, if the consent is given by the patient's representative, the representative must sign the MOST. The statute would also specify the information that must be contained on a MOST form.

Section 15 amends G.S. 130A-420 regarding who has the authority to dispose of a body or body parts. That authority is granted in the following, descending order:

- A health care agent appointed under a valid HCPOA and to the extent the authority is contained in the HCPOA.
- The personal representative of the estate or the executor under the decedent's will.
- The surviving spouse.
- A majority of the patient's reasonably available surviving children who are at least 18 years of age.
- The surviving parents.
- A majority of the surviving siblings who are at least 18 years of age.
- A majority of persons in classes of next degree of kinship who would inherit the estate if the person dies without a will.
- An individual who has exhibited care and concern for the decedent and who is willing to make decisions regarding the disposition.
- If none of the above are available or the decedent is indigent, a public administrator, medical examiner or any other public official charged with this responsibility.

Current law lists, in descending order, the following individuals: surviving spouse, majority of surviving children, surviving parents, majority of persons in classes entitled to inherit under intestate succession, and a person who as shown care and concern for the decedent.

Section 16(a), (b) and (c) amend provisions in Chapter 122C regarding advance instruction for mental health treatment to make those provisions conform to other changes already discussed.

Section 17 amends G.S. 130A-468 regarding the Advance Directive Registry maintained by the Secretary of State to provide that removal of a document from the registry database does not affect the validity of the document, relate to the accuracy of the information contained in the document, or create a presumption of validity regarding the document or the information contained in the document.

Section 18 amends G.S. 28A-13-1 to provide that if a HCPOA grants a health care agent the authority to make decisions related to the disposition of the principal's body, that authority takes priority over the authority of a personal representative regarding the same.

Section 19(a) and (b) amend the statutes related to preneed funeral contracts to provide a priority of persons authorized to serve as the legal representative of the preneed contract beneficiary

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

BACKGROUND: The bill is requested by the North Carolina Bar Association and the North Carolina Medical Society.

S1046e1-PCS35363-RC-21

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1270

Short Title:	Amend Larceny Laws.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LARCENY STATUTES AND TO CREATE THE CRIMINAL OFFENSES OF THEFT OF INFANT FORMULA AND ORGANIZED RETAIL THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G. S. 14-71 reads as rewritten:

"**§ 14-71. Receiving stolen goods.**

If any person shall receive any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken, whether or not the item has been feloniously stolen or taken, he shall be guilty of a Class H felony, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny."

SECTION 2. G.S. 14-72(a) reads as rewritten:

"(a) Larceny of goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) is a Class H felony. The receiving or possessing of stolen goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this

section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than ~~one thousand dollars ($1,000),~~ five hundred dollars ($500.00), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen."

SECTION 3. G.S. 14-72.1 reads as rewritten:

"§ 14-72.1 Concealment of merchandise in mercantile establishments.

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2.

(c) A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag or other product code used to identify the sales prices and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e).

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

(d1) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(d2) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using an exit door erected and maintained to comply

with the requirements of 29 C.F.R. § 1910 Subpart E to exit the premises of a store is guilty of a Class H felony.

(d3) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(e) Punishment. – For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant shall be guilty of a Class 1 misdemeanor. 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 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, the judge may pronounce such other sentence as the judge finds appropriate.

(f) Community Service Period. – If the judgment requires a defendant sentenced under this section to perform a specified number of hours of community service, the community service must be completed within:

(1) 90 days, if the amount of community service required is 72 hours or more;

(2) 60 days, if the amount of community service required is at least 48 hours but less than 72 hours; and

(3) 30 days, if the amount of community service required is at least 24 hours but less than 48 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. Failure to complete the community service requirement within the applicable time limits is a violation of the defendant's probation.

(g) Limitations. – 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 must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period; and

(3) The defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment."

SECTION 4. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-72.7. Theft of infant formula.**

(a) The term "infant formula", as used in this section, has the same meaning as found in 21 U.S.C. § 321(z)."

(b) If any person takes and carries away infant formula valued in excess of one hundred dollars ($100.00), that person is guilty of a Class H felony."

SECTION 5. Chapter 14 of the General Statutes is amended by adding a new article to read:

"Article 16A.

"Organized Retail Theft.

"**§ 14-86.5. Definitions.**

The following definitions apply in this Article:

(1) "Retail property." – Any new article, product, commodity, item, or component intended to be sold in retail commerce.

(2) "Retail property fence." – A person or business that buys retail property knowing or believing that retail property is stolen.

(3) "Theft." – To take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) "Value." – The retail value of an item as advertised by the affected retail establishment, to include all applicable taxes.

"**§ 14-86.6. Organized retail theft.**

(a) Offense: Organized Retail Theft. – A person who conspires with another person to commit theft of retail property from a retail establishment, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration is guilty of a Class G felony.

(b) Offense: Receiving and Possessing Retail Property Obtained by Organized Retail Theft. – A person who receives or possesses with the intent to distribute, any retail property into interstate commerce which has been taken or stolen in violation of this section, is guilty of a Class G felony.

(c) Explicit Representation of Theft of Retail Property. – It is not a defense to a charge of receiving stolen retail property in violation of this section that the retail property was obtained by means other than through the commission of a theft offense if the retail property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(d) Venue. – Venue for criminal actions to enforce the provisions of this section, including criminal actions with respect to each of the offenses included within organized retail theft as defined by this section, that have been committed, attempted, or

conspired to be committed by two or more persons, shall be in any county in which at least one criminal offense has occurred that constitutes part of the organized retail theft offenses. It is the intent of the General Assembly that one State court may have jurisdiction over all the conduct, persons, and retail property which are part of, or are directly related to, each and all of the criminal offenses forming part of the organized retail theft offenses; however, it is discretionary, not mandatory, to bring all criminal actions in one jurisdiction when organized retail theft offenses involve two or more counties.

(e) Forfeiture. – Any person who violates any provision of this section shall forfeit to the State any interest the person has acquired or maintained in violation of this section."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07
PROPOSED COMMITTEE SUBSTITUTE S1359-CSRI-6 [v.2]

4/27/2007 3:21:16 PM

Short Title: Red Light Exception/Motorcycles and Bicycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE OPERATOR OF A MOTORCYCLE OR BICYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE OR BICYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., or the operator of a bicycle shows all of the following:

(1) The operator brought the motorcycle or bicycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other motor vehicle, with the exception of a motorcycle or motorcycles, was sitting at or approaching the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) A minimum of three minutes elapsed after the motorcycle or bicycle operator receiving the citation entered the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1359:
Red Light Exception for Motorcycles

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Allran	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to Second Edition S1359-CSRI		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1359 would provide an affirmative defense to motorcycle and bicycle operators who violate the statutory prohibition against entering an intersection when facing a red light if the motorcycle operator shows all of the following: (i) the operator came to a complete stop at the red light; (ii) the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal, (iii) no other motor vehicles, with the exception of a motorcycle, were at or approaching the intersection; (iv) no pedestrians were attempting to cross at or near the intersection; and (v) a minimum of three minutes elapsed prior to the motorcycle entering the intersection.***

CHANGES MADE BY PCS:

- Extends the coverage of the affirmative defense given under the bill to bicycle operators.
- Deletes the requirement that the operator must show failure of the inductive loop to activate the signal in order for the affirmative defense to apply.
- Clarifies that no other **motor** vehicle, **except for another motorcycle**, may be at **or approaching** the intersection.
- Requires that a minimum of three minutes elapsed after the operator entered the intersection (deletes the requirement that at least one full traffic signal must have occurred).

CURRENT LAW: Under current law (G.S. 20-158(b)(2)a.), vehicles facing a red light must stop and are prohibited from entering the intersection while the light is red (other than to make a lawful right turn). Running a red light is an infraction punishable by a fine of not more than $100.00 (G.S. 20-176). The Division of Motor Vehicles assigns three points to a person's record for running a red light (G.S. 20-16).

With regard to the issue of the bill's impact on negligence/contributory negligence, G.S. 20-158(d) provides that "No failure to stop as required by the provisions of this section shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether a party was guilty of negligence or contributory negligence."

BILL ANALYSIS: The PCS would provide a motorcycle or bicycle operator who violates the statutory prohibition against entering an intersection when facing a red light an affirmative defense if the operator shows all of the following:

- the operator came to a complete stop at the red light;
- the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal;

- no other motor vehicles were at or approaching the intersection;
- no pedestrians were attempting to cross at or near the intersection; and
- a minimum of three minutes had elapsed prior to entering the intersection.

BACKGROUND: Actuated traffic signals alter their sequence based on demand, and are activated by vehicle detectors. With an actuated traffic signal, once a vehicle is detected by a sensor, the traffic signal will initiate a change in, or extension of, a traffic signal phase (e.g., change a red light to green). A common kind of vehicle detector used to govern actuated traffic signals is a **loop detector**. A loop detector works like a metal detector, it reacts to the presence of metal (or an electromagnetic field). The sensitivity of a loop detector varies due to a number of parameters. Depending on the sensitivity of a detector, the presence of a motorcycle may not trigger a change in the traffic signal.

Tennessee, Arkansas, Idaho, and Minnesota have enacted laws similar to the provisions of Senate Bill 1359.

EFFECTIVE DATE: The PCS would become effective December 1, 2007, and apply to offenses committed on or after that date.

S1359e2-SMRI-CSRI

Principal Clerk ____
Reading Clerk ____

2nd. Corrected Notice Senate Bill 92 added and SB 940 removed.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 3, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 92	Dangerous Dogs/Liability Insurance	Senator Bingham

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected Notice Senate Bill 92 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, May 3, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
SB 1359	Red Light Exception for Motorcycles.	Senator Allran

Presentations

Other Business

Adjournment

Senate Judiciary II (Criminal) Committee
Thursday, May 3, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1270	Amend Larceny Laws.	Senator Snow
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 92	Dangerous Dogs/Liability Insurance	Senator Bingham

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 3, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on May 3, 2007, with fifteen members present. Senator Hartsell introduced pages Hana Doran, Chris Trogdon, Ashley Mashaw and Rachel Skulkety and thanked them for their service.

SB 1270 (Amend Larceny Laws.) Senator Hartsell noted that the Proposed Committee Substitute had been adopted at the previous meeting and recognized Senator Snow to explain the bill. Questions from Senators Jones, East, Dorsett, Berger, Kerr, Jacumin and Apodaca were answered by Senator Snow and Mr. Andy Ellen, representing the Retail Merchants Association. Senator Dorsett moved to amend the bill. All voted and the motion failed. Senator Atwater moved for a favorable report of the Committee Substitute, unfavorable to the original bill, with a referral to Appropriations.

SB 1046 (Advance Directives/Health Care Pwr. Atty.-AB) As this was Senator Hartsell's bill, Senator Jones presided. The Proposed Committee Substitute was adopted at the previous meeting of the Committee. Senator Hartsell was recognized to explain the bill. Dr. Betty Wickham, Executive Director of Life Tree Organization and Ms. Barbara Holt, President, of Right to Life, spoke on the bill. Also speaking was Ms. Rose McCrary of Life Tree. Questions from Senators Allran, and Kerr were answered by Senator Hartsell. Senator Berger presented an amendment to be distributed to committee members for their review. Senator Jones noted that the bill would be continued at the next meeting of the Committee.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 92

Short Title:	Dangerous Dogs/Liability Insurance.	(Public)
Sponsors:	Senators Bingham; Berger of Rockingham, Boseman, Garrou, Hagan, Jones, Purcell, Rand, and Stevens.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF DANGEROUS AND POTENTIALLY DANGEROUS DOGS TO ACQUIRE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 67 of the General Statutes is amended by adding a new section to read:

"**§ 67-4.6. Owner required to have insurance.**

(a) Within 30 days of the determination by animal control authorities that a dog is a dangerous dog or a potentially dangerous dog under G.S. 67-4.1(a), the owner of the dog shall obtain, and upon demand present to an animal control officer evidence of, a policy of insurance in the amount of at least one hundred thousand dollars ($100,000) issued by an insurer authorized to do business in this State insuring the owner of the dog against liability for any personal injuries inflicted or other damage caused by the dog.

(b) Failure to obtain the insurance required by this section or to produce evidence of that insurance upon demand of an animal control officer is a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts occurring on or after that date.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phil Sellers MD.	NC Med. Soc.
Elizabeth Dalton	NCCNA
Andy Allen	NCCNA
Tessa Young	Food Lion
Rose McCreery	LifeTree
ELIZABETH WICKHAM	LIFETREE
Joe McClure	McClure Inc
David Gore	CBT - NC
DOUG HERON	NC BAR ASSOCIATION
Jim Blanco	BLANCO TACKABERY
Knox Person	Ward and Smith, P.A.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 3, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCMS
Rev. Mark Creech	CAL
[signature]	NCFPC
David Barnes	Poyner & Spruill
Chad Essick	Poyner & Spruill
Christine Wunsche	10$ - Daily Bulletin
Courtney Denning	NCBA
Ann Barnes	health care
Roger Manus	GACPP
Frank Barnes	Health Care
[signature]	IFNC
Russ Dubisky	IFNC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

May 3, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melanie Phelps	NC Medical Society
Doc Ski	CBA/ABATE - NC Bike PAC
TOMMY SHERBERT	CBA/ABATE OF N. CAROLINA
Henri McClees	McClees Consulting

mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section."

SECTION 2.(c) G.S. 32A-16(3) and (4) read as rewritten:

"(3) "Health care power of attorney" means a written ~~instrument,~~instrument that substantially meets the requirements of this Article, is signed in the presence of ~~two qualified witnesses, and acknowledged before a notary public,~~ at least one qualified witness, and is acknowledged before a notary public (who need not be a qualified witness), pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal.

(4) ~~"Life-sustaining procedures"~~ "Life-prolonging measures" are those forms of care or treatment which only serve to ~~artificially prolong~~prolong artificially the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain."

SECTION 2.(d) G.S. 32A-16(6) reads as rewritten:

"(6) "Qualified witness" means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the

giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"**§ 32A-24. Reliance on health care power of attorney; defense.**

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 36A-25, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

(NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.)

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of a attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent broad powers to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State.

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ (Physician)
2. _____ (Physician)

If I have not designated a physician, or no physician(s) named above are reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a trustee or successor trustee under any trust agreement of which I am a grantor or trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce

my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration. In exercising the authority to make health care decisions on my behalf, my health care agent:

_____(Initial) shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____(Initial) shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition.

_____(Initial) B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition

of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the

scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____(Initial) donate any needed organs or parts; or

_____(Initial) donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____(Initial) donate my body for anatomical study if needed

_____(Initial) In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be guardian of my person, to serve without bond of security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my

health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This health care power of attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of signer)

_____

(type/print name of witness)

Date _____ _____

(Official Seal) Signature of Notary Public

_____, Notary Public

Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or his representative has the fundamental right to control the decisions relating to the rendering of his own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or his representative may exercise these rights.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) As used in this Article the term:

(1) "Declarant" means a person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section;

(1a) 'Declaration' means any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section;

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(3) "Physician" means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina;

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a~~

~~sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician, if another physician is reasonably available;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are~~ That has been signed by the declarant in the presence of at least one witness who believes the declarant to be of sound mind and who states that he (i) is not related within the third degree to the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have a reasonable expectation that ~~they~~ he would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group care home in which the declarant resides,~~ is not the attending physician, or a licensed health care provider who is a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides, and (iv) ~~do~~ does not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) ~~below.~~ of this section."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future about whether you want your health care providers to apply life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family

members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State.

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply if my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____(Initial) I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____(Initial) I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____(Initial) I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____(Initial) may withhold or withdraw life-prolonging measures.

_____(Initial) shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

(NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.)

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____(Initial) I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.)

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____(Initial) Follow Advance Directive: This Advance Directive will override instructions my health care agent gives about prolonging my life.

_____(Initial) Follow Health Care Agent: My health care agent has authority to override this Advance Directive.

(NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.)

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this

instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I am competent, I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarent, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) nor an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of principal)

_____

(type/print name of witness)

Date _____ _____

Signature of Notary Public

(Official Seal)

_____, Notary Public

Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to~~

~~the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no

duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1) It is determined by the attending physician that the person's present condition is:~~

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

~~c. Diagnosed as a persistent vegetative state; and~~

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;

~~(4) The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children at least 18 years of age; or

(6) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) ~~A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~

(1) Consent that is evidenced in writing, and that is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption may be rebutted only upon proof that such consent was obtained by fraud, deception, or misrepresentation of a material fact.

(2) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

a. A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

b. A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

c. An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or

Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

d. The patient's spouse;

e. A majority of the patient's reasonably available parents and children at least 18 years of age; or

f. An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the persons listed under this subdivision is available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is conformation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"**§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.**

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's

representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file."

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form, and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; the name and telephone number of the physician, physician assistant, or nurse practitioner authorizing the order by signing the form; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e. the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; a signature clock for the patient or the patient's representative to sign if practicable; effective date of the form and review dates; and an advisory that the MOST may be revoked by the patient or the patient's representative. The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of extraordinary care pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST

not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15. G.S. 130A-420 reads as rewritten:

"**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

~~(1) The surviving spouse.~~

~~(2) A majority of the surviving children.~~

~~(3) The surviving parents.~~

~~(4) A majority of the surviving siblings.~~

~~(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.~~

~~(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.~~

(1a) The health care agent under a health care power of attorney giving the health care agent that authority to the extent provided in G.S. 32A-19(b).

(2a) The personal representative of the estate of the decedent, or the person named executor in a will prior to appointment.

(3a) The surviving spouse.

(4a) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(5a) The surviving parents.

(6a) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(7) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(8) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(9) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 16.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 16.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16.(c) G.S. 122C-72(1) reads as rewritten:

"(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of ~~two qualified witnesses who believe~~ at least one qualified witness who believes the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable."

SECTION 17. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 18. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 19.(a) G.S. 90-210.63 is amended by adding the following new subsection to read:

"(c) The following persons, in the priority listed below, shall have the right to serve as the legal representative of the preneed contract beneficiary:

(1) The health care agent under a health care power of attorney for the preneed contract beneficiary with authority to make funeral decisions to the extent provided in G.S. 32A-19(b);

(2) The personal representative of the estate of the preneed contract beneficiary, or the person named executor in a will prior to appointment; or

(3) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death:

a. The spouse of the preneed contract beneficiary;

b. Any adult child or stepchild of the preneed contract beneficiary;

c. Any parent of the preneed contract beneficiary;

d. Any adult sibling of the preneed contract beneficiary; or

e. A guardian of the person of the preneed contract beneficiary at the time of the preneed contract beneficiary's death."

SECTION 19.(b) G.S. 90-210.124(a) and 90-210.124(a)(1) read as rewritten:

"(a) The following ~~person,~~persons in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney giving the health care agent that authority to the extent provided in ~~Article 3 of Chapter 32 of the General Statues,~~ G.S. 32A-19(b), pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual."

SECTION 20. G.S. 90-321(e) reads as rewritten:

"(e) A ~~The above~~ declaration may be revoked by the declarant, in writing or in any manner by which ~~he~~ the declarant is able to communicate his or her intent to revoke in a clear and consistent manner, without regard to his or her mental or physical condition. ~~Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~ A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration."

SECTION 21. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3 May 2007

S. B. No. 1046 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1046-~~CSE~~ PCS 35363-RC-21

Rep.) Hartsell

Sen.)

moves to amend the bill on page 2, line 35

( ) WHICH CHANGES THE TITLE

by deleting the word "to" where it first appears in the line, and substituting "do";

and ~~pg~~ page 27, line 1, by rewriting the line to read:

"consent to the withholding of ~~extraordinary care~~ life-prolonging measures pursuant to ~~G.S. 90-322 of an~~".

SIGNED ~~Hartsell~~ Hartsell

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Statement of LifeTree concerning S 1046
Senate Judicial II Meeting, May 3, 2007

S-1046 is entitled an act to CLARIFY AND SIMPLIFY...advanced directives. There are three key elements in it, however, which go far beyond the scope of its title and introduce new and dangerous ideas.

I. Under current law for a living will to come into play, one of two conditions must be met.
- Two physicians must determine that a patient is "terminal and incurable".
- Or, a patient must be diagnosed as in a "persistent vegetative state".

S-1046 adds a third condition which will cause the "Declaration of a Desire for Natural Death" (living will) to come into effect.
- One who "suffers from advanced dementia or... substantial loss of cognitive ability (which) to a high degree of medical certainty is not reversible".

Existing law authorizing the Health Care Power of Attorney mentions in the statutory form "severe dementia" among the conditions for which a Health Care Agent could authorize withdrawal of "life sustaining procedures," but the prominent display of dementia in the "living will" breaks new ground.
- It would permit any persons to say that if they "suffer from advanced dementia or other loss of cognitive ability"; they are not to be given "life prolonging measures" which include food and water. *Although the person's death is not medically imminent, the advance directive leaves open the door for hastening death.*

"Right to die with dignity" is moving our society towards a "duty to die" when one becomes unproductive whether aged or disabled. Some will argue that it only authorizes the right of individuals to exercise autonomy over their lives. But autonomy must be exercised within a right and informed conscience. For this state legislature to *add dementia and loss of cognitive ability* as conditions under which people are invited to authorize in advance their own termination completely devalues life.

II. S1046 will give legal sanction to a Medical Order for Scope of Treatment (MOST) which acts like an extended DNR form. MOST is patterned after the POLST Paradigm developed in Oregon. It offers different levels of *limiting medical treatments* regarding use of antibiotics, artificially administered nutrition, artificially administered hydration, cardiac monitoring, hospital admission, etc. As proposed in rewritten 90-21.17:
- MOST accompanies the patient across settings, hospital, home, nursing home, etc.
- Other personnel in addition to physicians can sign it.
- Can be signed after the fact by a patient's "representative".

Unfortunately, we know little more about what the form (which appears to be an extended sort of living will) will actually be. *Its creation is to be delegated to the Department of HHS with very little apparent guidance.* The form is touted by proponents in their literature as honoring patient's wishes, *but there is nothing to prevent its being filled out under distress during an EMS visit or to prevent its becoming part of standard operating procedure when one must enter a nursing home.*

III. A valid Health Care Power of Attorney given to someone whom you trust who can speak for you when there is need to give informed consent is a valuable protection. S1046 contains a proposal, which goes well beyond "clarifying and simplifying." Rewritten GS 32A-24(c) would give a clerk of court the ability to suspend the authority of your health care agent. You would hate to think that if your validly appointed health care agent continued to direct that you be treated, fed and hydrated, *the courts could appoint a guardian to direct otherwise.*

A person would have to read both forms very carefully to understand that if they have executed both documents, it appears that they must check correctly the key box (6) in the Advance Directive form or their Health Care Providers could ignore their Health Care Agent who tries to correct any mistake they may have made in their Advance Directive.

Elizabeth D. Wickham, PhD, Executive Director, LifeTree
919-787-5434 For more information on end of life issues, go to www.lifetree.org.

SENATE BILL 1046:
Advance Directives/Health Care Pwr. Atty.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Kory Goldsmith
Version:	PCS to First Edition S1046-PCS35363-RC-21		Committee Counsel

SUMMARY: ***Senate Bill 1046 amends laws related to Health Care Powers of Attorney, Advance Directives/Living Wills, and Guardianship statutes to allow individuals to make clear choices about their medical treatment, especially end of life treatments.***

CURRENT LAW: Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. Article 3 of Chapter 32A authorizes health care powers of attorney and was enacted in 1991. Part 2 of Article 3 of Chapter 122C authorizes an instruction for mental health treatment and was enacted in 1997. There are also scattered statutes related to the authority of health care agents, especially in the event there is also a court appointed guardian. In general, when a person has executed both a Health Care Power of Attorney and a Living Will, the terms of the Living Will control over the health care agent designation.[1] A similar situation exists when there is a health care agent, and a court appoints a guardian.

BILL ANALYSIS:

Section 1 amends G.S. 32A-15(c) to provide that either a living will or a health care power of attorney (HCPOA) may provide that the health care power of attorney takes precedence over a living will, and that provision will not create a conflict between the two documents. *Under current law, it is not clear whether this situation does create a conflict. However, because current law gives a living will precedence over a HCPOA in the event of a conflict, it could be argued that the living will always "trumps" the HCPOA.*

This section also makes it clear that if a living will does not speak directly to a medical condition and the HCPOA does, the HCPOA controls.

Section 2 amends the definitions related to HCPOAs. It provides that the execution of a HCPOA need only be witnessed by one qualified witness. *Current law requires two qualified witnesses.* It also specifies that the notary may be an employee of the attending physician or employed by the health care facility where the principal is being treated.

Also changes the terminology from "life-sustaining procedures" to "life-prolonging measures". These are medical procedures or interventions which, in the judgment of the attending physician, serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function.

Section 3 replaces terminology, but also makes it clear that if a health care agent has the authority to made decisions regarding the disposition of the principal's remains, those decisions are limited to incurring reasonable costs and does not give the health care agent broader authority over the principal's estate or financial affairs.

Section 4 creates a procedure by which a guardian of the principal may petition a court to suspend the authority of a health care agent during the term of the guardianship. The court may suspend the agent's

[1] G.S. 32A-15(c).

authority for good cause shown, but must specify whether the guardian must act consistently with the HCPOA. Also creates immunity for a health care provider who relies upon a HCPOA until the provider receives actual knowledge of the court's order suspending the HCPOA.

Section 5(a) changes the terminology to be consistent with new definitions. **Section 5(b)** adds a new subsection to G.S. 32A-24 to clarify that a health care provider may rely upon the authority of a health care agent contained in a HCPOA, whether the HCPOA is executed in another jurisdiction, executed under the previous statutory form, or does not use the statutory form but does comply with applicable laws. The health care provider may rely upon the HCPOA until receiving actual notice of its revocation.

Section 6(a) repeals the current statutory HCPOA. **Section 6(b)** creates a new HCPOA statutory form, G.S. 3A-25.1(a). The form attempts to clarify the consequences of certain choices by the principal and also points out that certain provisions purporting to create limitations will not be effective unless the principal specifies the limitations. Also provides that use of the statutory form is optional, and is a nonexclusive method for creating a HCPOA. Subsection (b) of new G.S. 32A-25.1 provides that the new statutory form does not affect the use of previously executed HCPOAs.

Section 7 creates G.S. 32A-27 which provides that a HCPOA executed in another jurisdiction shall be valid in North Carolina if it appears it was executed in compliance with the law of the other state or the laws of North Carolina.

Section 8 allows a guardian of the person or legal guardian to petition the Clerk of Court to suspend the authority of a health care agent. It also specifies that the guardian does not have the authority to revoke a Living Will.

Section 9 clarifies that a health care agent has the right to make health care decisions for a ward for whom a legal guardian or guardian of the person has been appointed.

Section 10 revises terminology.

Section 11(a) amends G.S. 90-321 regarding Advance Directives or Living Wills. It defines a "Declaration" as any signed, witnessed, dated and notarized document that otherwise meets the requirements of the Article. These requirements allow for only one witness (*current law requires two witnesses)*, but that person must not have any interest in the declarant's estate or be an employee of the health care provider. It repeals the definition of "extraordinary means" and substitutes "life-prolonging measures" as that term is defined in the HCPOA statutes. It also repeals the term "persistent vegetative state".

It amends G.S. 90-321(b) and (c) to allow an attending physician to withhold life-prolonging measures if the declarant has properly executed a living will, the attending physician determines that the declarant:

- has incurable or irreversible condition that will result in the declarant's death in a relatively short period of time;
- is unconscious and, to a high degree of medical certainty, will never regain consciousness; or
- suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and, to a high degree of medical certainty, is not reversible.

AND

- The declarant's condition is confirmed by another physician, if one is reasonably available.

AND

- The Living Will states that the declarant understands that the document authorizes the attending physician to withhold life-prolonging measures.

Current law allows an attending physician to withhold artificial nutrition or hydration pursuant to a Living Will if: the declarant is terminally ill or diagnosed as being in a persistent vegetative state and these medical conditions are confirmed by a second medical opinion. The Declaration must be in writing, signed by the declarant and two witnesses, and notarized.

Section 11(b) repeals the current statutory form for Living Wills

Section 11(c) creates a new statutory form for Living Wills that reflects the statutory changes.

Sections 11(d) and (e) clarifies that a Declaration may be revoked orally or in writing without regard to a declarant's mental or physical condition. *Prior law made a revocation effective only upon communication of the revocation to the attending physician by the declarant or an individual acting on behalf of the declarant.* It provides immunity to a health care provider who acts in accordance with a revoked declaration unless the health care provider has actual knowledge of the revocation. Also extends the protections to a Declaration that is executed in another jurisdiction, and one that does not conform to the statutory form. It also prohibits a health care agent from revoking a declaration unless the HCPOA explicitly grants the agent this authority.

Section 11(d) creates a new subdivision (k) for G.S. 90-321 to allow a physician to decline to honor a Declaration if doing so would violate the physician's conscience or the conscience-based policy of the facility where the declarant is being treated. It also allows a physician to decline to honor a Declaration if after reasonable inquiry, there are reasonable grounds to question the genuineness or validity of the document.

Section 12 amends G.S. 90-322 regarding situations where life-prolonging measures may be withheld in the absence of a Declaration. If the attending physician determines that:

- a patient has an incurable or irreversible condition that will lead to that person's death in a relatively short period of time, or
- the patient is unconscious and unlikely to regain consciousness.

AND

- That condition is confirmed by another physician.

AND

- A bodily function could be restored or is being sustained by life-prolonging measures,

THEN

The life-prolonging measures may be withheld or discontinued at the direction and under the supervision of the attending physician with the concurrence of the following individuals, in descending order:

- A health care agent appointed under a valid HCPOA, unless that authority has been suspended by a court in favor of a court appointed guardian of the person or general guardian, in which case the court appointed guardian takes priority.
- An attorney-in-fact with powers to make health care decisions for the principal.
- The patient's spouse.

- A majority of the patient's reasonably available parents and children who are at least 18 years of age.
- A majority of the patient's reasonably available siblings who are at least 18 years of age.
- An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.
- If none of these are reasonably available, the attending physician may withhold or discontinue life-prolonging measures.

Current law gives priority decision-making to the following in descending order: a health care agent, then a guardian of the person, then the person's spouse, then a majority of the relatives of the first degree.

Section 13 amends G.S. 90-21.13 regarding informed consent to medical treatment under the medical malpractice provisions of the statutes. It sets out, in descending order, the persons who may give valid consent to medical treatment if the patient is comatose or otherwise lacks the capacity to make or communicate health care decisions. The same individuals are listed in the same order as those in Section 12 regarding the withholding or discontinuance of life-prolonging measures.

Current law provides that the patient's spouse, parent, guardian, or nearest relative may give the consent. It does not prioritize among those individuals.

Section 14 amends G.S. 90-21.17 regarding do not resuscitate orders (DNRs). It adds to the statutes Medical Order for Scope of Treatment (MOST). A MOST could be issued by a physician pursuant to the same consents necessary for a DNR. However, if the consent is given by the patient's representative, the representative must sign the MOST. The statute would also specify the information that must be contained on a MOST form.

Section 15 amends G.S. 130A-420 regarding who has the authority to dispose of a body or body parts. That authority is granted in the following, descending order:

- A health care agent appointed under a valid HCPOA and to the extent the authority is contained in the HCPOA.
- The personal representative of the estate or the executor under the decedent's will.
- The surviving spouse.
- A majority of the patient's reasonably available surviving children who are at least 18 years of age.
- The surviving parents.
- A majority of the surviving siblings who are at least 18 years of age.
- A majority of persons in classes of next degree of kinship who would inherit the estate if the person dies without a will.
- An individual who has exhibited care and concern for the decedent and who is willing to make decisions regarding the disposition.
- If none of the above are available or the decedent is indigent, a public administrator, medical examiner or any other public official charged with this responsibility.

Current law lists, in descending order, the following individuals: surviving spouse, majority of surviving children, surviving parents, majority of persons in classes entitled to inherit under intestate succession, and a person who as shown care and concern for the decedent.

Section 16(a), (b) and (c) amend provisions in Chapter 122C regarding advance instruction for mental health treatment to make those provisions conform to other changes already discussed.

Section 17 amends G.S. 130A-468 regarding the Advance Directive Registry maintained by the Secretary of State to provide that removal of a document from the registry database does not affect the validity of the document, relate to the accuracy of the information contained in the document, or create a presumption of validity regarding the document or the information contained in the document.

Section 18 amends G.S. 28A-13-1 to provide that if a HCPOA grants a health care agent the authority to make decisions related to the disposition of the principal's body, that authority takes priority over the authority of a personal representative regarding the same.

Section 19(a) and (b) amend the statutes related to preneed funeral contracts to provide a priority of persons authorized to serve as the legal representative of the preneed contract beneficiary

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

BACKGROUND: The bill is requested by the North Carolina Bar Association and the North Carolina Medical Society.

S1046e1-PCS35363-RC-21

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1270

Short Title:	Amend Larceny Laws.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LARCENY STATUTES AND TO CREATE THE CRIMINAL OFFENSES OF THEFT OF INFANT FORMULA AND ORGANIZED RETAIL THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G. S. 14-71 reads as rewritten:

"**§ 14-71. Receiving stolen goods.**

If any person shall receive any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken, whether or not the item has been feloniously stolen or taken, he shall be guilty of a Class H felony, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny."

SECTION 2. G.S. 14-72(a) reads as rewritten:

"(a) Larceny of goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) is a Class H felony. The receiving or possessing of stolen goods of the value of more than ~~one thousand dollars ($1,000)~~ five hundred dollars ($500.00) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this

section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than ~~one thousand dollars ($1,000),~~ five hundred dollars ($500.00), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen."

SECTION 3. G.S. 14-72.1 reads as rewritten:

"**§ 14-72.1 Concealment of merchandise in mercantile establishments.**

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2.

(c) A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag or other product code used to identify the sales prices and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e).

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

(d1) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(d2) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using an exit door erected and maintained to comply

with the requirements of 29 C.F.R. § 1910 Subpart E to exit the premises of a store is guilty of a Class H felony.

(d3) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

(e) Punishment. – For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant shall be guilty of a Class 1 misdemeanor. 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 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, the judge may pronounce such other sentence as the judge finds appropriate.

(f) Community Service Period. – If the judgment requires a defendant sentenced under this section to perform a specified number of hours of community service, the community service must be completed within:

(1) 90 days, if the amount of community service required is 72 hours or more;

(2) 60 days, if the amount of community service required is at least 48 hours but less than 72 hours; and

(3) 30 days, if the amount of community service required is at least 24 hours but less than 48 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. Failure to complete the community service requirement within the applicable time limits is a violation of the defendant's probation.

(g) Limitations. – 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 must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period; and

(3) The defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment."

SECTION 4. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-72.7. Theft of infant formula.**

(a) The term "infant formula", as used in this section, has the same meaning as found in 21 U.S.C. § 321(z)."

(b) If any person takes and carries away infant formula valued in excess of one hundred dollars ($100.00), that person is guilty of a Class H felony."

SECTION 5. Chapter 14 of the General Statutes is amended by adding a new article to read:

"Article 16A.

"Organized Retail Theft.

"**§ 14-86.5. Definitions.**

The following definitions apply in this Article:

(1) "Retail property." – Any new article, product, commodity, item, or component intended to be sold in retail commerce.

(2) "Retail property fence." – A person or business that buys retail property knowing or believing that retail property is stolen.

(3) "Theft." – To take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) "Value." – The retail value of an item as advertised by the affected retail establishment, to include all applicable taxes.

"**§ 14-86.6. Organized retail theft.**

(a) Offense: Organized Retail Theft. – A person who conspires with another person to commit theft of retail property from a retail establishment, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration is guilty of a Class G felony.

(b) Offense: Receiving and Possessing Retail Property Obtained by Organized Retail Theft. – A person who receives or possesses with the intent to distribute, any retail property into interstate commerce which has been taken or stolen in violation of this section, is guilty of a Class G felony.

(c) Explicit Representation of Theft of Retail Property. – It is not a defense to a charge of receiving stolen retail property in violation of this section that the retail property was obtained by means other than through the commission of a theft offense if the retail property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(d) Venue. – Venue for criminal actions to enforce the provisions of this section, including criminal actions with respect to each of the offenses included within organized retail theft as defined by this section, that have been committed, attempted, or

conspired to be committed by two or more persons, shall be in any county in which at least one criminal offense has occurred that constitutes part of the organized retail theft offenses. It is the intent of the General Assembly that one State court may have jurisdiction over all the conduct, persons, and retail property which are part of, or are directly related to, each and all of the criminal offenses forming part of the organized retail theft offenses; however, it is discretionary, not mandatory, to bring all criminal actions in one jurisdiction when organized retail theft offenses involve two or more counties.

(e) Forfeiture. – Any person who violates any provision of this section shall forfeit to the State any interest the person has acquired or maintained in violation of this section."

SECTION 6. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1270: Amend Larceny Laws

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 25, 2007
Introduced by:	Sen. Snow	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S1270-CSRD		Committee Counsel

SUMMARY: Senate Bill 1270 would amend existing law on larceny, receipt of stolen property, and shoplifting, would enact a new statute creating the Class H felony offense of 'theft of infant formula', and would add a new Article 16A – Organized Retail Theft.

[As introduced, this bill was identical to H1379, as introduced by Rep. Braxton, which is currently in House Judiciary II.]

BILL ANALYSIS: Section 1 – would amend existing G.S. 14-71. Receiving stolen goods, to specify that this offense does not require that the item received actually be stolen.

Section 2 – would lower the threshold for felony larceny (G.S. 14-72(a)) from the current amount of $1,000 to the new amount of $500. Larceny or receipt or possession of stolen goods valued more than $500 would be a Class H felony offense.

Section 3 – would amend the existing shoplifting statute (G.S. 14-72.1) by:

1) adding 'product codes' to price tags as items that may not be switched from one piece of merchandise to another;
2) inserting a new subsection (d2) classifying violations of this section that involve the use of an exit door as a Class H felony. The PCS would require that stores post signs on the exit doors with information about this new felony offense;
3) inserting a new subsection (d3) classifying violations of this section that involve removal, destruction or deactivation of antishoplifting or inventory control devices a Class H felony; and
4) the PCS would insert a new subsection (d4) classifying violations of this section that involve persons affixing "...a product code obtained or created by the person for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price..." a Class H felony.

Section 4 – would enact new G.S. 14-72.7 creating the Class H felony offense "Theft of infant formula" to apply to persons who take more than $100.00 of infant formula.

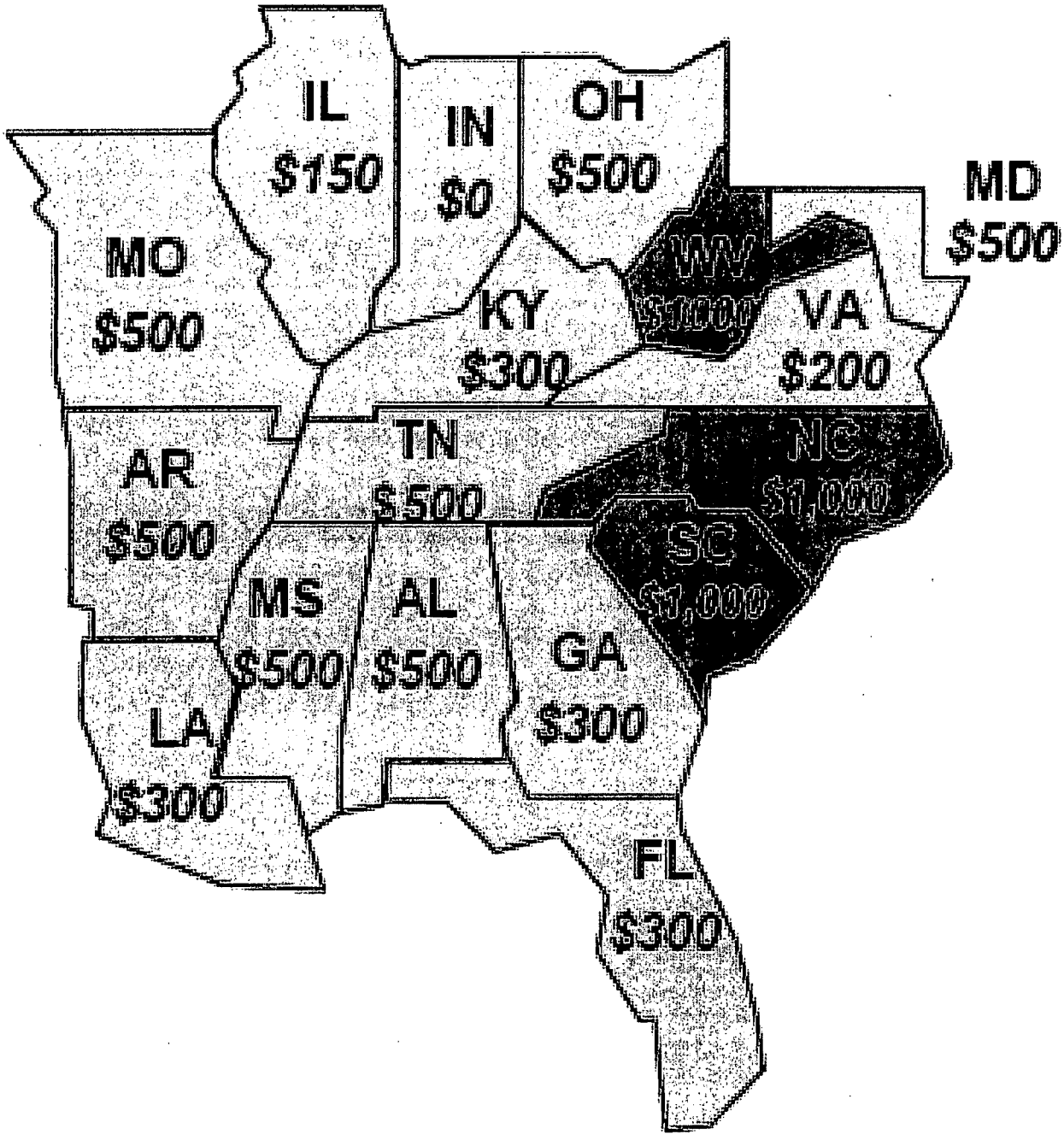
Section 5 – would enact a new Article 16A of Chapter 14 of the General Statutes. The new Article 16A – Organized Retail Theft, would create the following Class G felony offenses (G.S. 14-86.6):

1) "Organized Retail Theft" – A person who conspires with another to steal retail property (valued at more than $1,500 over a 90 period) from a retail establishment, with the intent to resell the property to a 'retail property fence' or other person.
2) "Receiving and Possessing Retail Property Obtained by Organized Retail Theft" – A person who receives or possesses with the intent to distribute property taken in violation of the new G.S. 14-86.6.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

S1270e1-SMRD-CSRD

Felony Theft Levels
Southeastern United States



$1,000

$100-750

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 8, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham
SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 1491	Adjust Penalty/Arson & Larceny.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, May 8, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 92	Dangerous Dogs/Liability Insurance.	Senator Bingham
SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1046	Advance Directives/Health Care Pwr. Atty.-AB	Senator Hartsell
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 1491	Adjust Penalty/Arson & Larceny.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 8, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on May 8, 2007, with fourteen members attending. Senator Hartsell introduced pages Karlen Guyton, Michelle Grimes and Tiffani Samei and thanked them for their service.

SB 1491 (Adjust Penalty/Arson & Larceny.) Senator Hartsell noted there was a Proposed Committee Substitute and asked for a motion to adopt it for purposes of discussion. Senator Apodaca so moved, all voted and the motion carried. Senator Hartsell then noted that the bill would be continued at a later meeting.

SB 92 (Dangerous Dogs/Liability Insurance.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Jones so moved, all voted and the motion carried. Senator Bingham was recognized to explain the bill. Questions from Senators Allran and Queen were answered by Ms. Kory Goldsmith, Staff Attorney. Senator Apodaca moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 1046 (Advance Directives/Health Care Pwr. Atty.-AB) As this was Senator Hartsell's bill, Senator Jones presided. The amendment that Senator Berger presented at the previous meeting was returned to Senator Berger due to the need for an actuarial note. Senator Hartsell was recognized to discuss the bill. Mr. Jim Creamer, representing the Bar Association, and Dr. Darlyne Menscer, representing the Medical Society, spoke on the bill. Monsignor Michael Clay, representing the Catholic Diocese of Raleigh, also spoke on the bill. Senator Berger presented an amendment and moved that it be adopted. All voted and the motion carried. Senator Hartsell presented a technical amendment and moved that it be adopted. All voted and the motion carried. After much discussion, Senator Bingham moved for a favorable report, as amended, unfavorable to the original bill, and rolled into a new Committee Substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 08, 2007

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

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

S.B. **1270** Amend Larceny Laws.

Draft Number:	PCS 75399
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 08, 2007

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

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

S.B. **92** Dangerous Dogs/Liability Insurance.

Draft Number:	PCS 55451
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1046** Advance Directives/Health Care Pwr. Atty.-AB

Draft Number:	PCS 35368
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

J-JI — 5-8-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chip Bigger	NCMS
Bill O'Donnell	NCSBA
[illegible]	NWC
Sally Johnson	NC Bd of Nursing
Joanne Stevens	Stevens & Assoc
Wayne Tuccy	Staff
Christina Wiewiora	NCSL - Irving Boyd Martin
Katherine Joyce	NCASA
Adam S. Keith	NCGA - Intern
Barbara Hoots	NCRTC
John Madler	NC Sentencing Commission

VISITOR REGISTRATION SHEET

5-08-07

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Duncan	SA
Charlene Carey	NC Right to Life
Thomas Goldsmith	NAO
[illegible]	Retired School Personnel
Ed Regan	N.C. R.G.E.A.
Pam Reardorff	NC Retired School Personnel
James Lamback	Elon University
Msgr. Michael Clay	Catholic Diocese of Raleigh
Rose Marie Swasey	Respect Life Rep
Douglas Wickham	Lobbyist
STEVE KEENE	NC MEDICAL SOCIETY

VISITOR REGISTRATION SHEET

5-08-07

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P. K. Sellers MD	NC Med. Soc.
T.J. Wasilewski PhD	NC Bike-PAC - CBA/ABOTEC of NC
Russ Dubitsky	EFNC
Joe [illegible]	LFNIC
Joe & Henri McClees	McClees Consulting, Inc.
Erica Peterson	NC Agribusiness Council
DAVID BARNES	POYNER & Spruill
ELIZABETH WERTHAM	Lobbyist
John [illegible]	NCPPC
John McKay	GovOffice
DENNIS PATTERSON	OSC

VISITOR REGISTRATION SHEET

5-08-07

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heiron	NC Bar Association
Deborah Allen	NC Nurses Association member
Andi Ellen	NCPA
Elizabeth Dalton	NCPMA
Autumn Frazer-Stearns	Guardian ad Litem Program, VGFW Counties
Mary Jo Ann Rowe	Guardian ad Litem Program: Vance, Granville, Franklin, Warren Counties
Courtney Denning	NCBA
Marcia Knox	CAT
Troy D. Page	NC Sentencing Commission
Cathy Wright	NCBS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 92

Short Title:	Dangerous Dogs/Liability Insurance.	(Public)
Sponsors:	Senators Bingham; Berger of Rockingham, Boseman, Garrou, Hagan, Jones, Purcell, Rand, and Stevens.	
Referred to:	Judiciary ll (Criminal).	

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF DANGEROUS AND POTENTIALLY DANGEROUS DOGS TO ACQUIRE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 67 of the General Statutes is amended by adding a new section to read:

"**§ 67-4.6. Owner required to have insurance.**

(a) Within 30 days of the determination by animal control authorities that a dog is a dangerous dog or a potentially dangerous dog under G.S. 67-4.1(a), the owner of the dog shall obtain, and upon demand present to an animal control officer evidence of, a policy of insurance in the amount of at least one hundred thousand dollars ($100,000) issued by an insurer authorized to do business in this State insuring the owner of the dog against liability for any personal injuries inflicted or other damage caused by the dog.

(b) Failure to obtain the insurance required by this section or to produce evidence of that insurance upon demand of an animal control officer is a Class 1 misdemeanor."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 92
PROPOSED COMMITTEE SUBSTITUTE S92-CSRC-7 [v.15]

5/2/2007 5:35:36 PM

Short Title: Dangerous Dogs/Financial Responsibility. (Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OWNERS OF SOME DANGEROUS DANGEROUS DOGS TO PROVIDE PROOF OF FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 67-4.1 reads as rewritten:

"**§ 67-4.1. ~~Definitions and procedures.~~Definitions; exclusions.**

(a) ~~As used in this Article, unless~~Unless the context clearly requires otherwise and except as modified in subsection (b) of this ~~section, the term:~~section, the following terms apply in this Article:

(1) ~~"Dangerous dog" means~~Dangerous dog. - A dog to which one or more of the following applies:

a. ~~A dog that:~~

~~1.~~ ~~Without~~ The dog without provocation has killed or inflicted severe injury on a ~~person; or~~person.

~~2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed in subdivision (2) of this subsection.~~

b. ~~Any dog~~ The dog is owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

c. A dangerous dog board has determined that the dog is a dangerous dog because the dog has inflicted severe injury on a person.

(1a) Appeals board. – The person or entity designated under G.S. 67-4.1A(c) to hear appeals regarding determinations made by a dangerous dog board.

(1b) Dangerous dog board or board. – The person or entity designated under G.S. 67-4.1A(a) to make determinations regarding whether a dog is a dangerous dog.

~~(2) "Potentially dangerous dog" means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:~~

~~a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or~~

~~b. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or~~

~~c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.~~

(3) ~~"Owner" means any~~ Owner. – Any person or legal entity that has a possessory property right in a dog.

(4) ~~"Owner's real property" means any~~ Owner's real property. – Any real property owned or leased by the owner of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

(5) ~~"Severe injury" means any~~ Severe injury. – Any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

(6) Surety. – As defined in G.S. 15A-531(8).

(b) The provisions of this Article do not apply ~~to:~~to any of the following:

(1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official ~~duties;~~duties.

(2) A dog being used in a lawful ~~hunt;~~hunt.

(3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the ~~dog; or~~dog.

(4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other ~~tort,~~ tort: was tormenting, abusing, or assaulting the ~~dog,~~ dog; had tormented, abused, or assaulted the ~~dog,~~ dog; or was committing or attempting to commit a crime.

~~(c) The county or municipal authority responsible for animal control shall designate a person or a Board to be responsible for determining when a dog is a "potentially dangerous dog" and shall designate a separate Board to hear any appeal. The person or Board making the determination that a dog is a "potentially dangerous dog" must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may~~

~~appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.~~"

SECTION 2. Article 1A of Chapter 67 of the General Statutes is amended by adding two new sections to read:

"**§ 67-4.1A. Dangerous dog board.**

(a) The county or municipal authority responsible for animal control shall designate a dangerous dog board. The board shall be responsible for determining whether a dog is a dangerous dog as defined in G.S. 67-4.1(a)(1)c. The board may make a determination that a dog is a dangerous dog under G.S. 67-4.1(a)(1)a. or (a)(1)b. Notwithstanding any other provision of law and regardless of whether a dangerous dog board has made any determination, a dog shall be considered a dangerous dog for purposes of this Article if the provisions of either G.S. 67-4.1(a)(1)a. or (a)(1)b. apply to the dog.

(b) The board shall provide written notification to the owner at least three days prior to making any determination under this Article. The notification shall state the reasons the board is considering making a determination. If a board determines that a dog is a dangerous dog, it shall provide the owner with written notification of the reasons for that determination and a copy of this Article.

(c) The county or municipal authority responsible for animal control shall also designate a separate appeals board to hear any appeal from a determination made by a dangerous dog board. An owner may appeal a determination by a dangerous dog board by filing written objections with the appeals board within three days of the dangerous dog board's determination. The appeals board shall schedule a hearing within 10 days of the filing of the objection.

(d) An owner may appeal from the final decision of the appeals board by filing a notice of appeal and petition for review with the superior court within 10 days of the final decision of the appeals board. Appeals from rulings of the appeals board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.

"**§ 67-4.1B. Proof of financial responsibility.**

(a) Upon a determination by a dangerous dog board that a dog is a dangerous dog, the board shall require the dog owner to demonstrate proof of financial responsibility to indemnify persons suffering damages as the result of personal injuries inflicted or other damage caused by the dangerous dog. The amount of financial responsibility shall be $5,000. Proof of financial responsibility may be demonstrated by any of the following methods:

(1) A cash deposit to be held by the clerk of court.

(2) A bond by at least one solvent surety.

(3) A policy of liability insurance.

(b) The deposit, bond, or policy of liability insurance shall be conditioned for payment to a third party for any personal injuries inflicted or other damage subsequently caused by the dangerous dog. Nothing in this section shall limit the strict liability of an owner under G.S. 67-4.4 for damages caused by a dangerous dog. An owner who is required to provide proof of financial responsibility under this section shall upon demand present to an animal control officer evidence of that proof.

(c) The owner shall provide to the dangerous dog board the required proof within five days of the board determining that the dog is dangerous under subsection (a) of this section. An appeal under G.S. 67-4.1A(c) of a determination by the dangerous dog board that a dog is a dangerous dog shall not stay the owner's obligation to provide proof of financial responsibility.

(d) Failure by the owner to provide proof of financial responsibility as required in this section or failure by the owner to produce evidence of the required proof upon demand by an animal control officer shall be grounds for the dangerous dog board to order that the dog be taken into custody and destroyed."

SECTION 3. This act becomes effective October 1, 2007, and applies to determinations made by a dangerous dog board on or after that date.

SENATE BILL 92:
Dangerous Dogs/Financial Responsibility

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	March 26, 2007
Introduced by:	Sen. Bingham	**Summary by:**	Kory Goldsmith Committee Co-Counsel
Version:	PCS to First Edition S92-CSRC-7		

SUMMARY: SB92 would require owners of certain dogs that have been determined to be dangerous to provide proof of financial responsibility in the amount of $5,000. Proof could be in the form of a cash deposit, a bond, or an insurance liability policy. If the owner does not provide proof of financial responsibility, the dog would be taken into custody and destroyed.

The Proposed Committee Substitute substantially rewrites the original bill and makes clarifying and technical revisions to existing law.

CURRENT LAW: Article 1A of Chapter 67 governs dangerous dogs.[1] A dangerous dog is a dog that has: (1) without provocation killed or inflicted severe injury to a person, or (2) is designated as a "potentially dangerous dog", or (3) is owned primarily for the purpose of dog fighting or trained for dog fighting.[2] G.S. 67-4.1(c) provides that the county or municipal authority responsible for animal control may designate a separate person or Board to be responsible for determining when a dog is a "potentially dangerous dog". A potentially dangerous dog is a dog that has been determined to have: (1) inflicted a bite to a person causing broken bones or disfiguring lacerations; (2) killed or inflected severe injury a upon domestic animal; or (3) approached a person when the dog was not on its owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

The Article does not apply to a dog: (1) being used by law enforcement to carry out the officer's official duties; (2) being used in a lawful hunt; (3) where the injury inflicted by the dog to a domestic animal occurred as the dog was working as a hunting dog, herding dog, or predator control dog; or (4) where the injury inflicted by the dog was sustained by a person who was committing a willful trespass, or tormenting the dog or attempting to commit a crime.[3]

It is unlawful for the owner of a dangerous dog to leave the dog unattended on the owner's real property unless the dog is confined indoors or in a securely enclosed and locked pen. It is also unlawful to allow a dangerous dog to leave the owner's real property unless the dog is leased and muzzled. A violation of these provisions is a Class 3 misdemeanor.[4] The owner of a dangerous dog that inflicts physical injuries requiring medical treatment in excess of $100 is guilty of a Class 1 misdemeanor.[5] The owner is strictly liable for any injuries or property damage caused by the dog.[6]

BILL ANALYSIS:

Section 1 rewrites the definitions section of Article 1A of Chapter 67. It repeals the provisions that created the category of "potentially dangerous dog" and limits the "dangerous dog" designation to a dog that: (1) without provocation killed or inflicted severe injury to a person, (2) is owned primarily for the

[1] G.S. 67-4.1 to 4.5.
[2] G.S. 67-4.1(a)(1) and (2).
[3] G.S. 67-4.1(b)
[4] G.S. 67-4.2
[5] G.S. 67-4.3
[6] G.S. 67-4.4

purpose of dog fighting or trained for dog fighting, or (3) is determined by a dangerous dog board to have inflicted serious injury to a person. A dog that kills a domestic animal or approached a person in a vicious manner could no longer be designated a dangerous dog. The section also creates a definition for the board or person that is responsible for determining that a dog is dangerous and a definition for a surety.[7]

Section 2 creates two new sections in Article 1A of Chapter 67:

G.S. 67-4.1A restates existing law that the county or municipal authority responsible for animal control must designate a board or person that is responsible for determining whether a dog is a dangerous dog. It specifies certain procedural requirements and restates the existing appeals process. It also requires that if a dangerous dog board determines a dog is dangerous, the board must provide the owner with written notification of the grounds for the determination and a copy of Article 1A of Chapter 67.[8] Current law places a number of responsibilities upon an owner of a dangerous dog and also makes the owner strictly liable for damages caused by the dog.

G.S. 67-4.1B provides that if a dangerous dog board determines that a dog is dangerous for any of the following reasons, the owner of the dog must provide proof of financial responsibility or the dog will be destroyed. The requirement would apply if the board determines the dog:

- Killed or inflicted severe injury on a person without having first been provoked.
- Is owned or harbored for the purpose of dog fighting or trained for dog fighting.
- Has inflicted a bite on a person that resulted in broken bones, disfiguring lacerations or that required cosmetic surgery or hospitalization.

Proof of financial responsibility could be evidenced by any of the following:

- A cash deposit to be held by the clerk of court.
- A bond issued by a solvent surety.
- A policy of liability insurance

The cash deposit, bond, or policy of insurance would be available to pay for personal injury damages or damage to property subsequently caused by the dangerous dog. Despite having proof of financial responsibility, the owner would still be strictly liable for any damages in excess of the required $5,000. If the owner did not provide proof of financial responsibility, the dog would be taken into custody and destroyed.

EFFECTIVE DATE: The act would become effective October 1, 2007, and apply to determinations made by a dangerous dog board on or after that date.

S0092e1-SMRC-CSRC-7

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[7] A surety is defined as one of the following:
a. An insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.
b. A professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.
c. An accommodation bondsman, when a bail bond is executed by a person who is at least 18 years of age, is a resident of the State, and who receives no financial consideration for providing the bond.

[8] A copy of the Article 1A is attached.

Article 1A.

Dangerous Dogs.

§ 67-4.1. Definitions and procedures.

(a) As used in this Article, unless the context clearly requires otherwise and except as modified in subsection (b) of this section, the term:

(1) "Dangerous dog" means

a. A dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed in subdivision (2) of this subsection.

b. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

(2) "Potentially dangerous dog" means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

b. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or

c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

(3) "Owner" means any person or legal entity that has a possessory property right in a dog.

(4) "Owner's real property" means any real property owned or leased by the owner of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

(5) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

(b) The provisions of this Article do not apply to:

(1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official duties;

(2) A dog being used in a lawful hunt;

(3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog; or

(4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was

tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

(c) The county or municipal authority responsible for animal control shall designate a person or a Board to be responsible for determining when a dog is a "potentially dangerous dog" and shall designate a separate Board to hear any appeal. The person or Board making the determination that a dog is a "potentially dangerous dog" must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.

§ 67-4.2. Precautions against attacks by dangerous dogs.

(a) It is unlawful for an owner to:

(1) Leave a dangerous dog unattended on the owner's real property unless the dog is confined indoors, in a securely enclosed and locked pen, or in another structure designed to restrain the dog;

(2) Permit a dangerous dog to go beyond the owner's real property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled.

(b) If the owner of a dangerous dog transfers ownership or possession of the dog to another person (as defined in G.S. 12-3(6)), the owner shall provide written notice to:

(1) The authority that made the determination under this Article, stating the name and address of the new owner or possessor of the dog; and

(2) The person taking ownership or possession of the dog, specifying the dog's dangerous behavior and the authority's determination.

(c) Violation of this section is a Class 3 misdemeanor.

§ 67-4.3. Penalty for attacks by dangerous dogs.

The owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars ($100.00) shall be guilty of a Class 1 misdemeanor.

§ 67-4.4. Strict liability.

The owner of a dangerous dog shall be strictly liable in civil damages for any injuries or property damage the dog inflicts upon a person, his property, or another animal.

§ 67-4.5. Local ordinances.

Nothing in this Article shall be construed to prevent a city or county from adopting or enforcing its own program for control of dangerous dogs.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 940

Short Title:	Legislative Access to Retirement Databases.	(Public)
Sponsors:	Senators Dorsett; Albertson, Cowell, Dannelly, Malone, and Purcell.	
Referred to:	Judiciary II (Criminal).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE RETIREMENT SYSTEM DIVISION OF THE DEPARTMENT OF STATE TREASURER TO PROVIDE DIRECT ACCESS TO INFORMATION REQUESTED BY THE FISCAL RESEARCH DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-32.01 reads as rewritten:

"**§ 120-32.01. Information to be supplied.**

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal Research, and Bill Drafting Divisions any information or records requested by them. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and the Fiscal Research Division access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division.

(c) Notwithstanding subsection (a) of this section or any other law relating to privacy of personnel records, the Retirement System Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to any information or records requested by them, including any database or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1046

Short Title:	Advance Directives/Health Care Pwr. Atty.-AB	(Public)
Sponsors:	Senators Hartsell; Forrester, Purcell, and Soles.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; AND TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life-sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending ~~physician. In this case, G.S. 90-322 does not apply.~~physician, as G.S. 90-322 shall not apply in such case."

SECTION 2.(a) G.S. 32A-16(1) reads as rewritten:

"(1) "Disposition of remains" means the decision to bury or cremate human ~~remains as~~ remains, as human remains are defined in G.S. ~~90-210.121(17).~~90-210.121, and, subject to G.S. 32A-19(b), funeral arrangements relating to burial or cremation."

SECTION 2.(b) G.S. 32A-16(1a) reads as rewritten:

"(1a) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or

mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section."

SECTION 2.(c) G.S. 32A-16(3) and (4) read as rewritten:

"(3) "Health care power of attorney" means a written ~~instrument,~~instrument that substantially meets the requirements of this Article, is signed in the presence of ~~two qualified witnesses, and acknowledged before a notary public,~~ at least one qualified witness, and is acknowledged before a notary public (who need not be a qualified witness), pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal.

(4) ~~"Life-sustaining procedures"~~ "Life-prolonging measures" are those forms of care or treatment which only serve to ~~artificially prolong~~prolong artificially the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain."

SECTION 2.(d) G.S. 32A-16(6) reads as rewritten:

"(6) "Qualified witness" means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the

giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"**§ 32A-24. Reliance on health care power of attorney; defense.**

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 36A-25, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"§ 32A-25.1. Statutory form health care power of attorney.

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

(NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.)

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of a attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent broad powers to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State.

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ (Physician)
2. _____ (Physician)

If I have not designated a physician, or no physician(s) named above are reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a trustee or successor trustee under any trust agreement of which I am a grantor or trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce

my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration. In exercising the authority to make health care decisions on my behalf, my health care agent:

_____(Initial) shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____(Initial) shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition.

_____(Initial) B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition

of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____(Initial) E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the

scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____(Initial) donate any needed organs or parts; or

_____(Initial) donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____(Initial) donate my body for anatomical study if needed

_____(Initial) In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be guardian of my person, to serve without bond of security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my

health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This health care power of attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of signer)

_____

(type/print name of witness)

Date _____ _____

(Official Seal) Signature of Notary Public

_____, Notary Public

Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or his representative has the fundamental right to control the decisions relating to the rendering of his own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or his representative may exercise these rights.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) As used in this Article the term:

(1) "Declarant" means a person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section;

(1a) 'Declaration' means any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section;

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(3) "Physician" means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina;

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a~~

~~sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician, if another physician is reasonably available;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are~~ That has been signed by the declarant in the presence of at least one witness who believes the declarant to be of sound mind and who states that he (i) is not related within the third degree to the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have a reasonable expectation that ~~they~~ he would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group care home in which the declarant resides,~~ is not the attending physician, or a licensed health care provider who is a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides, and (iv) ~~do~~ does not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) ~~below.~~ of this section."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future about whether you want your health care providers to apply life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family

members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. Do not sign this form until a witness and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State.

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply if my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____(Initial) I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____(Initial) I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____(Initial) I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____(Initial) may withhold or withdraw life-prolonging measures.

_____(Initial) shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

(NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.)

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____(Initial) I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.)

_____(Initial) I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

(NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.)

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____(Initial) Follow Advance Directive: This Advance Directive will override instructions my health care agent gives about prolonging my life.

_____(Initial) Follow Health Care Agent: My health care agent has authority to override this Advance Directive.

(NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.)

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this

instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I am competent, I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarent, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider who is (1) an employee of the principal's attending physician, (2) nor an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of principal)

_____

(type/print name of witness)

Date _____ _____

Signature of Notary Public

(Official Seal)

_____, Notary Public

Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to~~

~~the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no

duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1)~~ ~~It is determined by the attending physician that the person's present condition is:~~

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

~~c. Diagnosed as a persistent vegetative state; and~~

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;

~~(4)~~ ~~The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children at least 18 years of age; or

(6) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) ~~A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~

(1) Consent that is evidenced in writing, and that is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption may be rebutted only upon proof that such consent was obtained by fraud, deception, or misrepresentation of a material fact.

(2) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

a. A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

b. A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

c. An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or

Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

d. The patient's spouse;

e. A majority of the patient's reasonably available parents and children at least 18 years of age; or

f. An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the persons listed under this subdivision is available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is conformation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's

representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file."

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form, and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; the name and telephone number of the physician, physician assistant, or nurse practitioner authorizing the order by signing the form; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e. the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; a signature clock for the patient or the patient's representative to sign if practicable; effective date of the form and review dates; and an advisory that the MOST may be revoked by the patient or the patient's representative. The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of extraordinary care pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST

not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15. G.S. 130A-420 reads as rewritten:

"**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

~~(1) The surviving spouse.~~

~~(2) A majority of the surviving children.~~

~~(3) The surviving parents.~~

~~(4) A majority of the surviving siblings.~~

~~(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.~~

~~(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.~~

(1a) The health care agent under a health care power of attorney giving the health care agent that authority to the extent provided in G.S. 32A-19(b).

(2a) The personal representative of the estate of the decedent, or the person named executor in a will prior to appointment.

(3a) The surviving spouse.

(4a) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(5a) The surviving parents.

(6a) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(7) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(8) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(9) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 16.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 16.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16.(c) G.S. 122C-72(1) reads as rewritten:

"(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of ~~two qualified witnesses who believe~~ at least one qualified witness who believes the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable."

SECTION 17. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 18. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 19.(a) G.S. 90-210.63 is amended by adding the following new subsection to read:

"(c) The following persons, in the priority listed below, shall have the right to serve as the legal representative of the preneed contract beneficiary:

(1) The health care agent under a health care power of attorney for the preneed contract beneficiary with authority to make funeral decisions to the extent provided in G.S. 32A-19(b);

(2) The personal representative of the estate of the preneed contract beneficiary, or the person named executor in a will prior to appointment; or

(3) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death:

a. The spouse of the preneed contract beneficiary;

b. Any adult child or stepchild of the preneed contract beneficiary;

c. Any parent of the preneed contract beneficiary;

d. Any adult sibling of the preneed contract beneficiary; or

e. A guardian of the person of the preneed contract beneficiary at the time of the preneed contract beneficiary's death."

SECTION 19.(b) G.S. 90-210.124(a) and 90-210.124(a)(1) read as rewritten:

"(a) The following ~~person,~~persons in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney giving the health care agent that authority to the extent provided in ~~Article 3 of Chapter 32 of the General Statues,~~ G.S. 32A-19(b), pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual."

SECTION 20. G.S. 90-321(e) reads as rewritten:

"(e) A ~~The above~~ declaration may be revoked by the declarant, in writing or in any manner by which ~~he~~ the declarant is able to communicate his or her intent to revoke in a clear and consistent manner, without regard to his or her mental or physical condition. ~~Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~ A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration."

SECTION 21. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1046
PROPOSED COMMITTEE SUBSTITUTE S1046-PCS35363-RC-21

Short Title: Advance Directives/Health Care Pwr. Atty.-AB (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; AND TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life-sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending ~~physician. In this case, G.S. 90-322 does not apply.~~physician, as G.S. 90-322 shall not apply in such case."

SECTION 2. G.S. 32A-16 reads as rewritten:

"**§ 32A-16. Definitions.**

~~As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:~~The following definitions apply in this Article:

(1) ~~"Disposition of remains" means the~~ Disposition of remains. – The decision to bury or cremate human ~~remains as~~ remains, as human

remains are defined in G.S. ~~90-210.121(17).~~90-210.121, and, subject to G.S. 32A-19(b), arrangements relating to burial or cremation.

(1a) ~~"Health care" means any~~ Health care. – Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section.

(2) ~~"Health care agent" means the~~ Health care agent. – The person appointed as a health care attorney-in-fact.

(3) ~~"Health care power of attorney" means a~~ Health care power of attorney. – A written ~~instrument,~~instrument that substantially meets the requirements of this Article, that is signed in the presence of ~~two qualified witnesses, and acknowledged before a notary public,~~ at least one qualified witness, and is acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal. The notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any group-care home in which the principal resides.

(4) ~~"Life-sustaining procedures" are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.~~Life-prolonging measures. – Medical procedures or interventions which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplant a vital function, including mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment. Life-prolonging measures to not include care necessary to provide comfort or to alleviate pain.

(5) ~~"Principal" means the~~ Principal. – The person making the health care power of attorney.

(6) ~~"Qualified witness" means a~~ Qualified witness. – A witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he or she (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he or she would be entitled to any portion of the estate

of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

(7) ~~"Advance instruction for mental health treatment" or "advance instruction" means a written instrument as defined in G.S. 122C-72(1) pursuant to which the principal makes a declaration of instructions, information, and preferences regarding mental health treatment.~~Advance instruction for mental health treatment or advance instruction. – As defined in G.S. 122C-72(1).

(8) ~~"Mental health treatment" means the~~ Mental health treatment. – The process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" ~~includes, but is not limited to,~~ includes electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"§ 32A-24. Reliance on health care power of attorney; defense.

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

*This document gives the person you designate as your health care agent **broad powers** to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

*If you want to use this form you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** a witness and a notary public are present to watch you sign it. You then should give a copy to*

your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State: http://www.nclifelinks.org/ahcdr/

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ *(Physician)*

2. _____ *(Physician)*

If I have not designated a physician, or no physician(s) named above are reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a trustee or successor trustee under any trust agreement of which I am a grantor or trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

_____ shall NOT have the authority to withhold artificial nutrition
(Initial) (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____ shall NOT have the authority to withhold artificial hydration
(Initial) (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

_____ B. Limitations Concerning Health Care Decisions. In exercising
(Initial) the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ C. Limitations Concerning Mental Health Decisions. In
(Initial) exercising the authority to make mental care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____ *(Initial)* donate any needed organs or parts; or

_____ *(Initial)* donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____ donate my body for anatomical study if needed

(Initial)

_____

(Initial)

In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be guardian of my person, to serve without bond of security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This health care power of attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

_____
(type/print name of witness)

Date _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health

care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or ~~his~~ the patient's representative has the fundamental right to control the decisions relating to the rendering of ~~his~~ the patient's own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or ~~his~~ the patient's representative may exercise these rights.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) ~~As used in this Article the term:~~The following definitions apply in this Article:

(1) ~~"Declarant" means a~~ Declarant. – A person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section.

(1a) Declaration. Any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section.

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

(3) ~~"Physician" means any~~ Physician. – Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North ~~Carolina;~~Carolina.

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician, if another physician is reasonably available;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his~~

~~condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are~~ That has been signed by the declarant in the presence of at least one witness who believes the declarant to be of sound mind and who states that he or she (i) is not related within the third degree to the declarant or to the declarant's spouse, (ii) ~~do~~ does not know or have a reasonable expectation that ~~they~~ he or she would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group care home in which the declarant resides,~~is not the attending physician, or a licensed health care provider who is a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides, and (iv) ~~do~~ does not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection ~~(d) below.~~(d1) of this section. A notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any group-care home in which the declarant resides."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS ABOUT WHETHER TO APPLY LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future about whether you want your health care providers to apply life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by a qualified witness and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *a witness and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/.

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply if my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____ *(Initial)* I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____ *(Initial)* I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____ *(Initial)* I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____ *(Initial)* may withhold or withdraw life-prolonging measures.

_____ *(Initial)* shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____ *(Initial)* I DO want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.

_____ *(Initial)* I DO want to receive ONLY artificial hydration (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.

_____ *(Initial)* I DO want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____ *(Initial)* Follow Advance Directive: This Advance Directive will **override** instructions my health care agent gives about prolonging my life.

_____ *(Initial)* Follow Health Care Agent: My health care agent has authority to **override** this Advance Directive.

NOTE: DO NOT INITIAL BOTH BLOCKS. IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood or marriage, and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act, if the declarant died on this date without a will. I also state that I am not the declarant's attending physician, nor a licensed health care provider who is (1) an employee of the declarant's attending physician, (2) nor an employee of the health facility in which the declarant is a patient, or (3) an employee of a nursing home or any group care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

_____
(type/print name of witness)

Date _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this

section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration that expresses a desire of the declarant that life prolonging measures not be used if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1) It is determined by the attending physician that the person's present condition is:~~

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~

~~c. Diagnosed as a persistent vegetative state; and~~

(1a) That the person:

a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or

b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;

~~(4) The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age; or

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age.

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is reasonably available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) ~~A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact.~~A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~

(1) Consent that is evidenced in writing, and that is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption may be rebutted only upon proof that such consent was obtained by fraud, deception, or misrepresentation of a material fact.

(2) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

a. A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

b. A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

c. An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

d. The patient's spouse;

e. A majority of the patient's reasonably available parents and children who are at least 18 years of age;

f. A majority of the patient's reasonably available siblings who are at least 18 years of age; or

g. An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the persons listed under this subdivision is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is conformation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of

Chapter 90, and Article 3 of Chapter 122C, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file."

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form, and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; the name and telephone number of the physician, physician assistant, or nurse practitioner authorizing the order by signing the form; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e. the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; a signature block for the patient or the patient's representative to sign if practicable; effective date of the form and review dates; and an advisory that the MOST may be revoked by the patient or the patient's representative. The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to

consent to the withholding of extraordinary care pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15. G.S. 130A-420 reads as rewritten:

"**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

~~(1) The surviving spouse.~~

~~(2) A majority of the surviving children.~~

~~(3) The surviving parents.~~

~~(4) A majority of the surviving siblings.~~

~~(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.~~

~~(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.~~

(1a) The health care agent under a health care power of attorney giving the health care agent that authority to the extent provided in G.S. 32A-19(b).

(2a) The personal representative of the estate of the decedent, or the person named executor in a will prior to appointment.

(3a) The surviving spouse.

(4a) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(5a) The surviving parents.

(6a) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(7) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(8) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

(9) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 16.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority

by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 16.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16.(c) G.S. 122C-72(1) reads as rewritten:

"(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of ~~two qualified witnesses who believe~~ at least one qualified witness who believes the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable."

SECTION 17. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 18. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 19.(a) G.S. 90-210.63 is amended by adding the following new subsection to read:

"(c) The following persons, in the priority listed below, shall have the right to serve as the legal representative of the preneed contract beneficiary:

(1) The health care agent under a health care power of attorney for the preneed contract beneficiary with authority to make funeral decisions to the extent provided in G.S. 32A-19(b);

(2) The personal representative of the estate of the preneed contract beneficiary, or the person named executor in a will prior to appointment; or

(3) Any of the following persons, in order of priority, when persons in prior classes are not available at the time of death:

a. The spouse of the preneed contract beneficiary;

b. Any adult child or stepchild of the preneed contract beneficiary;

c. Any parent of the preneed contract beneficiary;

d. Any adult sibling of the preneed contract beneficiary; or

e. A guardian of the person of the preneed contract beneficiary at the time of the preneed contract beneficiary's death."

SECTION 19.(b) G.S. 90-210.124(a) and 90-210.124(a)(1) read as rewritten:

"(a) The following ~~person,~~persons in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney giving the health care agent that authority to the extent provided in ~~Article 3 of Chapter 32 of the General Statues,~~ G.S. 32A-19(b), pursuant to a preneed funeral

contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual."

SECTION 20. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1046

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

S1046-ARC-28 [v.1]

Date May 8, 2007, 2007

Comm. Sub. [YES]
Amends Title [NO]
S1046-PCS35363-RC-21

Senator Hartsell

moves to amend the bill on page 2, line 32, by deleting the work "supplant" and substituting the word "supplanting".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3 May 2007

S. B. No. 1046 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1046 ~~-CSR~~ PCS35363-RC-21

Rep.) Hartsell

Sen.)

moves to amend the bill on page 2, line 35

( ) WHICH CHANGES THE TITLE

by deleting the word "to" where it first appears in the line, and substituting "do";

and Page 27, line 1, by rewriting the line to read:

"consent to the withholding of ~~extraordinary care~~ life-prolonging measures pursuant to ~~G.S. 90-322 of an~~".

SIGNED ~~Hartsell Hartsell Jr~~

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 8 May 2007

S. B. No. 1046 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X PCS35363-RC-21

Rep.)
Sen.) Berger

1 moves to amend the bill on page 1, line 3

2 ( ) WHICH CHANGES THE TITLE

3 by ~~inserting~~ deleting the word "AND";

4 and on page 1, line 4, by deleting

5 the word "DESIGNATIONS." and

6 substituting the following "DESIGNATIONS;

7 AND TO STUDY ISSUES RELATED TO

8 ~~TRANSFER~~ THE ABILITY OF A PERSON TO

9 DIRECT THAT MEDICAL CARE TO PROLONG

10 LIFE ~~MAY~~ SHALL BE CONTINUED.";

11

12 and on page 31, lines 8-9, by inserting

13 between those lines, the following:

14 "SECTION 19.(c) The ~~Con~~ Legislative

15 Research Commission shall study the

16 issue of whether North Carolina law

17 should be amended to allow a person to

18 require life prolonging measures. The

19 LRC shall involve all stakeholders in the

study. The LRC shall report its recommendations

to the 2008 Session of the 2007 General Assembly.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 1046:
Advance Directives/Health Care Pwr. Atty.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S1046-PCS35363-RC-21		

SUMMARY: ***Senate Bill 1046 amends laws related to Health Care Powers of Attorney, Advance Directives/Living Wills, and Guardianship statutes to allow individuals to make clear choices about their medical treatment, especially end of life treatments.***

CURRENT LAW: Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. Article 3 of Chapter 32A authorizes health care powers of attorney and was enacted in 1991. Part 2 of Article 3 of Chapter 122C authorizes an instruction for mental health treatment and was enacted in 1997. There are also scattered statutes related to the authority of health care agents, especially in the event there is also a court appointed guardian. In general, when a person has executed both a Health Care Power of Attorney and a Living Will, the terms of the Living Will control over the health care agent designation.[1] A similar situation exists when there is a health care agent, and a court appoints a guardian.

BILL ANALYSIS:

Section 1 amends G.S. 32A-15(c) to provide that either a living will or a health care power of attorney (HCPOA) may provide that the health care power of attorney takes precedence over a living will, and that provision will not create a conflict between the two documents. *Under current law, it is not clear whether this situation does create a conflict. However, because current law gives a living will precedence over a HCPOA in the event of a conflict, it could be argued that the living will always "trumps" the HCPOA.*

This section also makes it clear that if a living will does not speak directly to a medical condition and the HCPOA does, the HCPOA controls.

Section 2 amends the definitions related to HCPOAs. It provides that the execution of a HCPOA need only be witnessed by one qualified witness. *Current law requires two qualified witnesses.* It also specifies that the notary may be an employee of the attending physician or employed by the health care facility where the principal is being treated.

Also changes the terminology from "life-sustaining procedures" to "life-prolonging measures". These are medical procedures or interventions which, in the judgment of the attending physician, serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function.

Section 3 replaces terminology, but also makes it clear that if a health care agent has the authority to made decisions regarding the disposition of the principal's remains, those decisions are limited to incurring reasonable costs and does not give the health care agent broader authority over the principal's estate or financial affairs.

Section 4 creates a procedure by which a guardian of the principal may petition a court to suspend the authority of a health care agent during the term of the guardianship. The court may suspend the agent's

[1] G.S. 32A-15(c).

authority for good cause shown, but must specify whether the guardian must act consistently with the HCPOA. Also creates immunity for a health care provider who relies upon a HCPOA until the provider receives actual knowledge of the court's order suspending the HCPOA.

Section 5(a) changes the terminology to be consistent with new definitions. **Section 5(b)** adds a new subsection to G.S. 32A-24 to clarify that a health care provider may rely upon the authority of a health care agent contained in a HCPOA, whether the HCPOA is executed in another jurisdiction, executed under the previous statutory form, or does not use the statutory form but does comply with applicable laws. The health care provider may rely upon the HCPOA until receiving actual notice of its revocation.

Section 6(a) repeals the current statutory HCPOA. **Section 6(b)** creates a new HCPOA statutory form, G.S. 3A-25.1(a). The form attempts to clarify the consequences of certain choices by the principal and also points out that certain provisions purporting to create limitations will not be effective unless the principal specifies the limitations. Also provides that use of the statutory form is optional, and is a nonexclusive method for creating a HCPOA. Subsection (b) of new G.S. 32A-25.1 provides that the new statutory form does not affect the use of previously executed HCPOAs.

Section 7 creates G.S. 32A-27 which provides that a HCPOA executed in another jurisdiction shall be valid in North Carolina if it appears it was executed in compliance with the law of the other state or the laws of North Carolina.

Section 8 allows a guardian of the person or legal guardian to petition the Clerk of Court to suspend the authority of a health care agent. It also specifies that the guardian does not have the authority to revoke a Living Will.

Section 9 clarifies that a health care agent has the right to make health care decisions for a ward for whom a legal guardian or guardian of the person has been appointed.

Section 10 revises terminology.

Section 11(a) amends G.S. 90-321 regarding Advance Directives or Living Wills. It defines a "Declaration" as any signed, witnessed, dated and notarized document that otherwise meets the requirements of the Article. These requirements allow for only one witness *(current law requires two witnesses)*, but that person must not have any interest in the declarant's estate or be an employee of the health care provider. It repeals the definition of "extraordinary means" and substitutes "life-prolonging measures" as that term is defined in the HCPOA statutes. It also repeals the term "persistent vegetative state".

It amends G.S. 90-321(b) and (c) to allow an attending physician to withhold life-prolonging measures if the declarant has properly executed a living will, the attending physician determines that the declarant:

- has incurable or irreversible condition that will result in the declarant's death in a relatively short period of time;
- is unconscious and, to a high degree of medical certainty, will never regain consciousness; or
- suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and, to a high degree of medical certainty, is not reversible.

AND

- The declarant's condition is confirmed by another physician, if one is reasonably available.

AND

- The Living Will states that the declarant understands that the document authorizes the attending physician to withhold life-prolonging measures.

Current law allows an attending physician to withhold artificial nutrition or hydration pursuant to a Living Will if: the declarant is terminally ill or diagnosed as being in a persistent vegetative state and these medical conditions are confirmed by a second medical opinion. The Declaration must be in writing, signed by the declarant and two witnesses, and notarized.

Section 11(b) repeals the current statutory form for Living Wills

Section 11(c) creates a new statutory form for Living Wills that reflects the statutory changes.

Sections 11(d) and (e) clarifies that a Declaration may be revoked orally or in writing without regard to a declarant's mental or physical condition. *Prior law made a revocation effective only upon communication of the revocation to the attending physician by the declarant or an individual acting on behalf of the declarant.* It provides immunity to a health care provider who acts in accordance with a revoked declaration unless the health care provider has actual knowledge of the revocation. Also extends the protections to a Declaration that is executed in another jurisdiction, and one that does not conform to the statutory form. It also prohibits a health care agent from revoking a declaration unless the HCPOA explicitly grants the agent this authority.

Section 11(d) creates a new subdivision (k) for G.S. 90-321 to allow a physician to decline to honor a Declaration if doing so would violate the physician's conscience or the conscience-based policy of the facility where the declarant is being treated. It also allows a physician to decline to honor a Declaration if after reasonable inquiry, there are reasonable grounds to question the genuineness or validity of the document.

Section 12 amends G.S. 90-322 regarding situations where life-prolonging measures may be withheld in the absence of a Declaration. If the attending physician determines that:

- a patient has an incurable or irreversible condition that will lead to that person's death in a relatively short period of time, or
- the patient is unconscious and unlikely to regain consciousness.

AND

- That condition is confirmed by another physician.

AND

- A bodily function could be restored or is being sustained by life-prolonging measures,

THEN

The life-prolonging measures may be withheld or discontinued at the direction and under the supervision of the attending physician with the concurrence of the following individuals, in descending order:

- A health care agent appointed under a valid HCPOA, unless that authority has been suspended by a court in favor of a court appointed guardian of the person or general guardian, in which case the court appointed guardian takes priority.
- An attorney-in-fact with powers to make health care decisions for the principal.
- The patient's spouse.

- A majority of the patient's reasonably available parents and children who are at least 18 years of age.
- A majority of the patient's reasonably available siblings who are at least 18 years of age.
- An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.
- If none of these are reasonably available, the attending physician may withhold or discontinue life-prolonging measures.

Current law gives priority decision-making to the following in descending order: a health care agent, then a guardian of the person, then the person's spouse, then a majority of the relatives of the first degree.

Section 13 amends G.S. 90-21.13 regarding informed consent to medical treatment under the medical malpractice provisions of the statutes. It sets out, in descending order, the persons who may give valid consent to medical treatment if the patient is comatose or otherwise lacks the capacity to make or communicate health care decisions. The same individuals are listed in the same order as those in Section 12 regarding the withholding or discontinuance of life-prolonging measures.

Current law provides that the patient's spouse, parent, guardian, or nearest relative may give the consent. It does not prioritize among those individuals.

Section 14 amends G.S. 90-21.17 regarding do not resuscitate orders (DNRs). It adds to the statutes Medical Order for Scope of Treatment (MOST). A MOST could be issued by a physician pursuant to the same consents necessary for a DNR. However, if the consent is given by the patient's representative, the representative must sign the MOST. The statute would also specify the information that must be contained on a MOST form.

Section 15 amends G.S. 130A-420 regarding who has the authority to dispose of a body or body parts. That authority is granted in the following, descending order:

- A health care agent appointed under a valid HCPOA and to the extent the authority is contained in the HCPOA.
- The personal representative of the estate or the executor under the decedent's will.
- The surviving spouse.
- A majority of the patient's reasonably available surviving children who are at least 18 years of age.
- The surviving parents.
- A majority of the surviving siblings who are at least 18 years of age.
- A majority of persons in classes of next degree of kinship who would inherit the estate if the person dies without a will.
- An individual who has exhibited care and concern for the decedent and who is willing to make decisions regarding the disposition.
- If none of the above are available or the decedent is indigent, a public administrator, medical examiner or any other public official charged with this responsibility.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1491*

Short Title:	Adjust Penalty/Arson & Larceny.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR SECOND DEGREE ARSON AND TO AMEND THE PENALTY FOR CERTAIN OFFENSES OF LARCENY, EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSES BY AMENDING THE VALUE RANGES TO WHICH THE CRIMINAL PENALTIES APPLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a ~~Class G felony.~~Class F felony."

SECTION 2. G.S. 14-72(a) reads as rewritten:

"(a) ~~Larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars ($1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars ($1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.~~

Larceny of goods or property and the receipt or possession of stolen goods are criminal offenses punishable as provided by this section. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen. Except as provided by

subsections (b) and (c) of this section, a violation of this subsection is punishable as follows:

(1) The offense is a Class 1 misdemeanor if the value of the goods or property is one thousand dollars ($1,000) or less.

(2) The offense is a Class H felony if the value of the goods or property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000).

(3) The offense is a Class G felony if the value of the goods or property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000).

(4) The offense is a Class F felony if the value of the goods or property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000).

(5) The offense is a Class E felony if the value of the goods or property exceeds one hundred thousand dollars ($100,000)."

SECTION 3. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employees.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. ~~If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.~~A violation of this section shall be punishable as follows:

(1) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 4. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be guilty of a ~~felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.~~felony punishable as follows:

(1) If the value of the property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 5. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be guilty of a ~~felony. If the value of the property is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony.~~ felony punishable as follows:

(1) If the value of the property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 6. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.**

(a) If an officer, agent, or employee of an entity listed ~~below,~~ in subsection (c) of this section or a person having or holding money or property in trust for one of the ~~listed entities,~~ entities listed in subsection (c) of this section, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be guilty of a ~~felony. If the value of the money or property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money or property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.~~ felony punishable as follows:

(1) If the value of the money or property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money or property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money or property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money or property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money or property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

(b) If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be guilty of a ~~felony. If the value of the money, funds, securities, or other property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, funds, securities, or other property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.~~ felony punishable as follows:

(1) If the value of the money, funds, securities, or other property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, funds, securities, or other property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, funds, securities, or other property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, funds, securities, or other property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, funds, securities, or other property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

(c) The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

SECTION 7. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when

called on, he shall be guilty of a ~~felony. If the violation of this section involves money with a value of one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the violation of this section involves money with a value of less than one hundred thousand dollars ($100,000) or less, a violation of this section is a Class H felony.~~ felony punishable as follows:

(1) If the violation of this section involves money with a value of one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the violation of this section involves money with a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the violation of this section involves money with a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the violation of this section involves money with a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the violation of this section involves money with a value that exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 8. G.S. 14-97 reads as rewritten:

"**§ 14-97. Appropriation of partnership funds by partner to personal use.**

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~felony. Appropriation of partnership funds with a value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with the value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony.~~ felony punishable as follows:

(1) Appropriation of partnership funds with a value of one thousand dollars ($1,000) or less is a Class I felony.

(2) Appropriation of partnership funds with a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000) is a Class H felony.

(3) Appropriation of partnership funds with a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000) is a Class G felony.

(4) Appropriation of partnership funds with a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000) is a Class F felony.

(5) Appropriation of partnership funds with a value that exceeds one hundred thousand dollars ($100,000) is a Class C felony."

SECTION 9. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be guilty of a ~~felony. If the property, money, or effects has a value of one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the property, money, or effects has a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.~~ felony punishable as follows:

(1) If the property, money, or effects has a value of one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the property, money, or effects has a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the property, money, or effects has a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the property, money, or effects has a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the property, money, or effects has a value that exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 10. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of ~~embezzlement, and shall be punished as a felon. If the value of the taxes is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the taxes is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony.~~embezzlement. A violation of this section shall be punishable as follows:

(1) If the value of the taxes is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the taxes exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the taxes exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the taxes exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the taxes exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 11. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. ~~If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.~~A violation of this section is a felony punishable as follows:

(1) If the value of the money, goods, property, services, chose in action, or other thing of value is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 12. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1491*
PROPOSED COMMITTEE SUBSTITUTE S1491-CSRD-17 [v.1]

5/7/2007 11:35:56 AM

Short Title: Prohibit Blunt Wraps. (Public)

Sponsors:

Referred to:

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO INCLUDE BLUNT WRAPS IN THE DEFINITION OF DRUG PARAPHERNALIA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.21(a)(12) is amended by adding a new subsubdivision to read:

"n. Blunt wraps, to include (1) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked, or (2) a product that is marketed and sold as a blunt wrap.".

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Principal Clerk ____
Reading Clerk ____

CORRECTED NOTICE

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 10, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 1491	Adjust Penalty/Arson & Larceny.	Senator Hartsell
SB 132	Protect Children From Sexual Predators Act.	Senator Dalton
SB 930	Private Correctional Officers.	Senator Jones
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1407	Resale of Tickets via Internet.	Senator Hartsell
SB 1430	Amend Crim Offenses/Injury to Property.	Senator Atwater

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, May 10, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 940	Legislative Access to Retirement Databases.	Senator Dorsett
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 1491	Adjust Penalty/Arson & Larceny.	Senator Hartsell
SB 132	Protect Children From Sexual Predators Act.	Senator Dalton
SB 930	Private Correctional Officers.	Senator Jones
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1407	Resale of Tickets via Internet.	Senator Hartsell
SB 1430	Amend Crim Offenses/Injury to Property.	Senator Atwater

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 10, 2007

Senator Fletcher Hartsell,, Chairman, called the Senate Judiciary II committee to order on March 10, 2007, with sixteen members present. Senator Hartsell introduced pages Kristen Guyton and Karlen Guyton, and thanked them for their service.

SB 940 (Legislative Access to Retirement Databases.) A Proposed Committee Substitute was adopted at a previous meeting and Senator Dorsett was recognized to explain the bill. She presented an amendment to the Proposed Committee Substitute and moved that it be adopted. All voted and the motion carried. Ms. Jennifer McGinnis, Staff Attorney, explained the amendment. Dr. Lynn Muchmore, Director of the Fiscal Research Division, spoke in favor of the bill. Mr. Michael Williamson, Director of the North Carolina Retirement Systems, spoke on opposition to the bill. Questions from Senators Goodall, Allran and Apodaca were answered by Mr. Williamson and Dr. Muchmore. Senator Apodaca moved for a favorable report to the bill as amended, unfavorable to the original bill and rolled into a new Committee Substitute. All voted and the motion carried.

SB 930 (Private Correctional Officers) Senator Hartsell noted there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion. Senator East so moved, all voted and the motion carried. Senator Jones was recognized to explain the bill. Senator Dalton moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 132 (Protect Children From Sexual Predators Act.) Senator Hartsell noted that there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion. Senator Bingham so moved, all voted and the motion carried. Senator Dalton was recognized to explain the bill. Senator Dalton recognized Attorney General Roy Cooper who spoke in favor of the bill. After much discussion, Senator Dannelly moved for a favorable report. Senator Hartsell noted that the motion would be held, and the bill would be continued at the following meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, May 14, 2007

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

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

S.B. **930** Private Correctional Officers.

Draft Number:	PCS 55470
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **940** Legislative Access to Retirement Databases.

Draft Number:	PCS 65248
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

May 10, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chad Essick	Poyner + Spruill
Kimberly Overton	Conference of DA's
Ron Moore	Dist. Atty. Buncombe
Robin Pendergraft	SBI
BILL WEIS	SBI
PAM TULLY	SBI/DOT
Bynee	NTV
Will Polk	Office of Lt. Gov.
CASANDRA WHITE	GOV. OFFICE
Kaitlin Kubinsky	NCGA
Johanna Reese	DOT
Kelly Hodak	UNC-TV

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

May 10, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Templeton	NC Wildlife
Norman Young	NCWRC/NCDOT
DICK HAMILTON	NCWRC
Keith Wiley	Staff
Gary Austin	RSD
Joe White	RSD
Debra Bryan	RSD
Stella Huggins	NC DST
Dr. Ann Harris	LATHA
Mildred Spearman	NCDOC
Kevin West	NC SBI

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 10, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Randy Fraser	TWC
Stan Pace	Verizon
Tracy Kimbrell	Parker Poe
Amy McConkey	Smith Anderson
[signature]	CAA
Dianna Jessup	
ROBERT BROWN	KTR Comm
Emily Atkinson	Capstrat
Doug Miskew	Capstrat
Penny Griffin	Daily Bulletin
JENNIFER CANADA	NC DOJ

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 10, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Josh Stein	NCAG-O
Jay Chaudhuri	"
Brenda Menard	"
Bill Scoggin	KCC
Rob Holliday	WCTI-TV
Renee Chou/John Cox	WRAL-TV
Kate Bolduan/Chris Hayes	WTUD-TV
John Madler	NC Sentencing Commission
Carl Goodwin	OSA
Adam Keith	NCGA-Intern
Jared Smith	Ticketmaster

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

May 10, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Freeman	Ticketmaster
Sandy Sash	WCSR
Kevin Reonard	WCSR
Buck Gunnells	NCBA
B J Sullivan	Staff
	Citizen

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 940

Short Title:	Legislative Access to Retirement Databases.	(Public)
Sponsors:	Senators Dorsett; Albertson, Cowell, Dannelly, Malone, and Purcell.	
Referred to:	Judiciary II (Criminal).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE RETIREMENT SYSTEM DIVISION OF THE DEPARTMENT OF STATE TREASURER TO PROVIDE DIRECT ACCESS TO INFORMATION REQUESTED BY THE FISCAL RESEARCH DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-32.01 reads as rewritten:

"**§ 120-32.01. Information to be supplied.**

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal Research, and Bill Drafting Divisions any information or records requested by them. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and the Fiscal Research Division access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division.

(c) Notwithstanding subsection (a) of this section or any other law relating to privacy of personnel records, the Retirement System Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to any information or records requested by them, including any database or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission."

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

SENATE BILL 940:
Legislative Access to Retirement Databases

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	April 30, 2007
Introduced by:	Sen. Dorsett	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 940 would require the Retirement System Division (RSD) of the Department of State Treasurer (DST) to provide direct online read-only access to any information or records, including any database or information stored electronically (regardless of the medium for storage) requested by the Fiscal Research Division of the General Assembly, notwithstanding any other law concerning privacy of personnel records.

CURRENT LAW: All State departments, agencies, and institutions must furnish the Legislative Services Office and the Research, Fiscal Research (FRD), and Bill Drafting Divisions of the General Assembly any information or records requested by them. Under current law, each State agency must give the designated entities within the General Assembly **"access to any data base"** or information stored electronically (regardless of the medium for storage) except when accessibility is prohibited by a federal law or State statute.

BACKGROUND: In May 2006 FRD staff requested that RSD staff provide them with online access to retirement data. RSD subsequently denied FRD direct access to the database(s) in question, and based upon internal departmental policy, indicated that RSD staff would provide information to FRD only upon written request.

BILL ANALYSIS: The bill would require RSD to provide FRD and the other designated entities within the General Assembly direct online read-only access to any information or records, including any database or information stored electronically (regardless of the medium for storage), notwithstanding any other law concerning privacy of personnel records

EFFECTIVE DATE: This bill would be effective when it becomes law.

S0940e1-SMRI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 940

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

S940-ARI-9 [v.1]

Date _____,2007

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

Senator Dorsett

moves to amend the bill on page 1, lines 20 through 26, by rewriting those lines to read:

"(c) Consistent with subsection (a) of this section and notwithstanding any other law relating to privacy of personnel records, the Retirement Systems Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to active and retired member information or records maintained by the Retirement Systems Division in online information systems. Direct online read-only access shall not include access to medical records of individual members. Nothing in this subsection shall limit the provisions of subsection (a) of this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Items in ORBIT payroll

1) Benefits
2) Tax withholding
3) Health Insurance deductions
4) Child support deductions
5) Tax Levies deductions
6) Payments to ex spouse as result of Equitable Distribution Order
7) Type of retirement benefit payments—i.e. disability, service, etc
8) Beneficiary information
9) Journal comments ---regardless of subject
10) Notation of receipt of legal documents---example, Power of Attorney, Guardianship papers, etc
11) Contact information----example--Telephone numbers---email addresses—mailing address
12) Contribution Account final balance
13) EFT bank information---bank account number
14) Social Security offsets for DIPNC benefits
15) 1099R and W2 tax reporting info

Items on Active contribution account

1) Salary and contributions
2) Service credit
3) Short term or long term disability status
4) Statement of Income information
5) Contact information----example--Telephone numbers---email addresses—mailing address
6) Beneficiary information
7) Journal comments ---regardless of subject
8) Notation of receipt of legal documents---example, Power of Attorney, Guardianship papers, etc
9) Disability Case tracking info

Imaging

1) Court Orders/Legal Documents
   a) Equitable Distribution orders
   b) Child Support orders
   c) Guardianship papers
   d) Power of Attorney
   e) IRS tax levies
2) Any correspondence from or to member
3) Any form received from member ---except disability
4) Statement of Income documents

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07
PROPOSED COMMITTEE SUBSTITUTE S1359-CSRI-8 [v.2]

5/2/2007 3:24:34 PM

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE OPERATOR OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other motor vehicle, with the exception of a motorcycle or motorcycles, was sitting at, traveling through, or approaching the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The motorcycle operator who received the citation waited a minimum of three minutes at the intersection or stop bar where the steady red light was being emitted in the direction of the operator before entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1359:
Red Light Exception for Motorcycles

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 3, 2007
Introduced by:	Sen. Allran	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to Second Edition S1359-CSRI-8		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1359 would provide an affirmative defense to motorcycle operators who violate the statutory prohibition against entering an intersection when facing a red light if the motorcycle operator shows all of the following: (i) the operator came to a complete stop at the red light; (ii) the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal, (iii) no other motor vehicles, with the exception of a motorcycle, were at, traveling through, or approaching the intersection; (iv) no pedestrians were attempting to cross at or near the intersection; and (v) the operator waited a minimum of three minutes at the red light prior to entering the intersection.***

CHANGES MADE BY PCS S1359-CSRI-8:

- Deletes references to bicycles.
- Adds "traveling through" to subdivision (3).
- Clarifies language in subdivision (5).

CURRENT LAW: Under current law (G.S. 20-158(b)(2)a.), vehicles facing a red light must stop and are prohibited from entering the intersection while the light is red (other than to make a lawful right turn). Running a red light is an infraction punishable by a fine of not more than $100.00 (G.S. 20-176). The Division of Motor Vehicles assigns three points to a person's record for running a red light (G.S. 20-16).

With regard to the issue of the bill's impact on negligence/contributory negligence, G.S. 20-158(d) provides that "No failure to stop as required by the provisions of this section shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether a party was guilty of negligence or contributory negligence."

BILL ANALYSIS: The PCS would provide a motorcycle operator who violates the statutory prohibition against entering an intersection when facing a red light an affirmative defense if the operator shows all of the following:

- the operator came to a complete stop at the red light;
- the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal;
- no other motor vehicles were at, traveling through, or approaching the intersection;
- no pedestrians were attempting to cross at or near the intersection; and
- the operator waited a minimum of three minutes at the red light prior to entering the intersection.

BACKGROUND: Actuated traffic signals alter their sequence based on demand, and are activated by vehicle detectors. With an actuated traffic signal, once a vehicle is detected by a sensor, the traffic signal will initiate a change in, or extension of, a traffic signal phase (e.g., change a red light to green). A common kind of vehicle detector used to govern actuated traffic signals is a **loop detector**. A loop detector works like a metal detector, it reacts to the presence of metal (or an electromagnetic field). The sensitivity of a loop detector varies due to a number of parameters. Depending on the sensitivity of a detector, the presence of a motorcycle may not trigger a change in the traffic signal.

Tennessee, Arkansas, Idaho, and Minnesota have enacted laws similar to the provisions of Senate Bill 1359.

EFFECTIVE DATE: The PCS would become effective December 1, 2007, and apply to offenses committed on or after that date.

S1359e2-SMRI-CSRI-8

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1491*

Short Title:	Adjust Penalty/Arson & Larceny.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR SECOND DEGREE ARSON AND TO AMEND THE PENALTY FOR CERTAIN OFFENSES OF LARCENY, EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSES BY AMENDING THE VALUE RANGES TO WHICH THE CRIMINAL PENALTIES APPLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a ~~Class G felony.~~Class F felony."

SECTION 2. G.S. 14-72(a) reads as rewritten:

"(a) ~~Larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars ($1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars ($1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.~~

Larceny of goods or property and the receipt or possession of stolen goods are criminal offenses punishable as provided by this section. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen. Except as provided by

subsections (b) and (c) of this section, a violation of this subsection is punishable as follows:

(1) The offense is a Class 1 misdemeanor if the value of the goods or property is one thousand dollars ($1,000) or less.

(2) The offense is a Class H felony if the value of the goods or property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000).

(3) The offense is a Class G felony if the value of the goods or property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000).

(4) The offense is a Class F felony if the value of the goods or property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000).

(5) The offense is a Class E felony if the value of the goods or property exceeds one hundred thousand dollars ($100,000)."

SECTION 3. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employees.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. ~~If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.~~A violation of this section shall be punishable as follows:

(1) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 4. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be guilty of a ~~felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.~~felony punishable as follows:

(1) If the value of the property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 5. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be guilty of a ~~felony. If the value of the property is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony.~~ felony punishable as follows:

(1) If the value of the property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 6. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.**

(a) If an officer, agent, or employee of an entity listed ~~below,~~ in subsection (c) of this section or a person having or holding money or property in trust for one of the ~~listed entities,~~ entities listed in subsection (c) of this section, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be guilty of a ~~felony. If the value of the money or property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money or property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.~~ felony punishable as follows:

(1) If the value of the money or property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money or property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money or property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money or property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money or property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

(b) If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be guilty of a ~~felony. If the value of the money, funds, securities, or other property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, funds, securities, or other property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.~~ felony punishable as follows:

(1) If the value of the money, funds, securities, or other property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, funds, securities, or other property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, funds, securities, or other property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, funds, securities, or other property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, funds, securities, or other property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

(c) The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

SECTION 7. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when

called on, he shall be guilty of a ~~felony. If the violation of this section involves money with a value of one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the violation of this section involves money with a value of less than one hundred thousand dollars ($100,000) or less, a violation of this section is a Class H felony.~~ felony punishable as follows:

(1) If the violation of this section involves money with a value of one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the violation of this section involves money with a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the violation of this section involves money with a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the violation of this section involves money with a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the violation of this section involves money with a value that exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 8. G.S. 14-97 reads as rewritten:

"**§ 14-97. Appropriation of partnership funds by partner to personal use.**

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~felony. Appropriation of partnership funds with a value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with the value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony.~~ felony punishable as follows:

(1) Appropriation of partnership funds with a value of one thousand dollars ($1,000) or less is a Class I felony.

(2) Appropriation of partnership funds with a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000) is a Class H felony.

(3) Appropriation of partnership funds with a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000) is a Class G felony.

(4) Appropriation of partnership funds with a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000) is a Class F felony.

(5) Appropriation of partnership funds with a value that exceeds one hundred thousand dollars ($100,000) is a Class C felony."

SECTION 9. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be guilty of a ~~felony. If the property, money, or effects has a value of one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the property, money, or effects has a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.~~ felony punishable as follows:

(1) If the property, money, or effects has a value of one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the property, money, or effects has a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the property, money, or effects has a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the property, money, or effects has a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the property, money, or effects has a value that exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 10. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of ~~embezzlement, and shall be punished as a felon. If the value of the taxes is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the taxes is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony.~~embezzlement. A violation of this section shall be punishable as follows:

(1) If the value of the taxes is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the taxes exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the taxes exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the taxes exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the taxes exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 11. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. ~~If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.~~ A violation of this section is a felony punishable as follows:

(1) If the value of the money, goods, property, services, chose in action, or other thing of value is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 12. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1491*
PROPOSED COMMITTEE SUBSTITUTE S1491-CSRD-17 [v.1]

5/7/2007 11:35:56 AM

Short Title: Prohibit Blunt Wraps. (Public)

Sponsors:

Referred to:

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO INCLUDE BLUNT WRAPS IN THE DEFINITION OF DRUG PARAPHERNALIA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.21(a)(12) is amended by adding a new subsubdivision to read:

"n. Blunt wraps, to include (1) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked, or (2) a product that is marketed and sold as a blunt wrap.".

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 132

Short Title:	Protect Children From Sexual Predators Act.	(Public)
Sponsors:	Senators Dalton, Snow, Boseman; Apodaca, Brunstetter, Cowell, Dorsett, Goodall, Goss, Hagan, Jones, Queen, Stevens, Tillman, and Weinstein.	
Referred to:	Judiciary ll (Criminal).	

February 14, 2007

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO PROVIDE THAT IT SHALL BE ILLEGAL FOR THE OWNER OR OPERATOR OF A SOCIAL NETWORKING WEB SITE TO ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR MAINTAIN A PROFILE WEB PAGE ON A SOCIAL NETWORKING WEB SITE WITHOUT THE PERMISSION OF THE MINOR'S PARENT OR GUARDIAN AND WITHOUT PROVIDING SUCH PARENT OR GUARDIAN ACCESS TO SUCH PROFILE WEB PAGE AND TO PROVIDE FOR PENALTIES; TO PROVIDE THAT A FILM PROCESSOR, PHOTO FINISHER, OR COMPUTER TECHNICIAN WHO, IN THE COURSE OF WORK, ENCOUNTERS AN IMAGE OF A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE CUSTOMER REQUESTING THE WORK TO THE APPROPRIATE AUTHORITIES; TO INCREASE THE PENALTY FOR CERTAIN OFFENSES OF SOLICITATION OF CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; TO MAKE IT A FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION; TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO CONTROLLED SUBSTANCES AND TO AMEND THE PROCEDURE FOR CONVENING AN INVESTIGATIVE GRAND JURY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or

performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a ~~minor.~~minor, and G.S. 14-190.25, film, digital image, video processor or photo finisher or computer technician to report digital image, video or film or computer images containing pictures of a minor engaging in sexual activity.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
   a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
   b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
   c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:
   a. Masturbation, whether done alone or with another human or an animal.
   b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
   c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
   d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
   e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.
   f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or

vagina, except when done as part of a recognized medical procedure.

g. The lascivious exhibition of the genitals or pubic area of any person.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state."

SECTION 2. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 3. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class D felony."

SECTION 4. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class E felony."

SECTION 5. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-190.25. Film, digital image, video processor or photo finisher or computer technician to report digital image, video or film or computer images containing pictures of a minor engaging in sexual activity.**

(a) Any retail or wholesale film, digital image or video processor or photo finisher who is requested to develop film, digital image or video and any computer technician working with a computer who views an image of a minor or a person who appears to be a minor who is engaging in sexual activity shall report the name and address of the individual requesting the development of the film, or the owner or person in possession of the computer to the Cyber Tip Line at the National Center for Missing and Exploited Children and to the appropriate law enforcement official in the county or municipality in which the image or film was submitted. Any person complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report.

(b) Any person who knowingly fails to report as required by this section is guilty of an infraction punishable by a fine of two hundred fifty dollars ($250.00)."

SECTION 6. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is ~~a Class H felony.~~punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant or the person for whom the defendant was arranging the meeting in violation of this section actually appears at the meeting location, then the violation is a Class E felony."

SECTION 7. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) For purposes of this section, the term "official inquiry" means the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law.

(b) 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.

(c) In response to an official inquiry by a sworn agent of the State Bureau of Investigation, any person who shall willfully do any of the following is guilty of a Class H felony:

(1) Falsify or conceal by any trick, scheme, or device a material fact.

(2) Make any materially false, fictitious, or fraudulent statement or representation.

(3) Use any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry."

SECTION 8. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Requiring parental permission for minors to access social networking Web sites.**

(a) Definitions. – The following definitions apply in this section:

(1) Internet. – The global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(2) Person. – A sole proprietor, partnership, corporation, limited liability company, trust, joint venture, or other legally cognizable entity.

(3) Protected computer. – Any computer that, at the time of an alleged violation of any provision of this section involving that computer, was located within the geographic boundaries of the State of North Carolina.

(4) Social networking Web site. – A Web site on the Internet that contains profile web pages of the members of the Web site containing the name

or nickname of the member, photographs placed on the profile web page by the member, and other personal information about the member; contains links to other profile web pages on the social networking Web site of friends or associates of the member that can be accessed by other members or visitors to the Web site; and provides members of or visitors to the social networking Web site the ability to leave messages or comments on the profile web page that are visible to all or some visitors to the profile web page and may also include a form of electronic mail for members of the social networking Web site.

(b) Offense. – It is unlawful for the owner or operator of a social networking Web site to allow a minor using a protected computer to become a member or to create or maintain a profile web page on a social networking Web site without the permission of the minor's parent or guardian and without providing the parent or guardian access to the profile web page at all times. The identity of the parent or guardian shall be verified by comparing the personal information provided by the parent or guardian against information found in databases containing information aggregated about individuals.

(c) Penalties. – Any person violating this section shall be punished as follows:

(1) On the first offense, a person is guilty of a Class 3 misdemeanor.

(2) On the second or subsequent offense, a person is guilty of a Class 1 misdemeanor."

SECTION 9.(a) Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Investigative grand jury.**

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission of or conspiracy to commit any of the following:

(1) The misdemeanor or felony offense of obstruction of justice (Common law offense).

(2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).

(3) A violation of G.S. 14-90 (Embezzlement of property received by virtue of office or employment), G.S. 14-100 (Obtaining property by false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of notes, checks, and other securities; counterfeiting of instruments).

(4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the dissemination of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).

(5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).

(6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening), G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to

discharge duties), G.S. 14-234 (Public officers or employees benefiting from public contracts), or G.S. 14-234.1 (Misuse of confidential information).

(7) A violation of G.S. 14-254 (Malfeasance of corporation officers and agents).

(8) A violation of Article 37 of Chapter 14 of the General Statutes (Relating to lotteries, gaming, bingo, and raffles).

(9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled substances and continuing criminal enterprises).

(10) A violation of Article 20, 22, or 22A of Chapter 163 of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulation of contributions and expenditures in political campaigns).

(b) Appointment of Permanent Three-Judge Panel to Determine Whether to Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years thereafter, the Chief Justice shall appoint a permanent panel of three superior court judges to determine whether to order an investigative grand jury convened under this section. The panel of judges shall be appointed to serve for a term of two years. The Chief Justice shall fill any vacancy that occurs on the panel before the two-year term ends.

(c) Procedure for Determining Whether to Convene Investigative Grand Jury. – A written petition for convening of an investigative grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the petition to the panel of three judges established under subsection (b) of this section to determine whether to order the grand jury convened. An investigative grand jury under this section may be convened if the three-judge panel determines all of the following:

(1) The petition alleges the commission of or a conspiracy to commit any of the offenses listed in subsection (a) of this section, any part of which violation or conspiracy occurred in the county where the proposed investigative grand jury sits or will sit, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury.

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury

to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed.

A grand jury authorized by this section may be convened from an existing grand jury or grand juries authorized by G.S. 15A-622(b) or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding G.S. 15A-622(b), grand jurors impaneled pursuant to this section shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(d) Investigative Grand Jury Proceedings and Operations. – If an investigative grand jury is convened pursuant to this section, notwithstanding G.S. 15A-623(d), a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, the prosecutor may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with the witness's counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding G.S. 15A-623(e), the record of the examination of witnesses shall be made available to the examining prosecutor, and the prosecutor may disclose contents of the record to other investigative or law enforcement officers, the witness or the witness's attorney to the extent that the disclosure is appropriate to the proper performance of the prosecutor's official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this section may be made upon written order of a superior court judge if the judge determines disclosure is essential:

(1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or

(2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to this section, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera

proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A of the General Statutes. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court."

SECTION 9.(b) G.S. 15A-622(h) is repealed.

SECTION 9.(c) G.S. 15A-623(h) is repealed.

SECTION 10. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 132
PROPOSED COMMITTEE SUBSTITUTE S132-CSRI-1 [v.9]

5/9/2007 4:45:37 PM

Short Title: Protect Children From Sexual Predators Act. (Public)

Sponsors:

Referred to:

February 14, 2007

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO PROVIDE THAT A PROCESSOR OF PHOTOGRAPHIC IMAGES OR A COMPUTER TECHNICIAN WHO, IN THE COURSE OF WORK, ENCOUNTERS AN IMAGE OF A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE CUSTOMER REQUESTING THE WORK TO THE APPROPRIATE AUTHORITIES; TO PROVIDE THAT IT SHALL BE UNLAWFUL FOR THE OWNER OR OPERATOR OF A COMMERCIAL SOCIAL NETWORKING WEB SITE TO ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR MAINTAIN A PERSONAL WEB PAGE ON A COMMERCIAL SOCIAL NETWORKING WEB SITE WITHOUT THE PERMISSION OF THE MINOR'S PARENT OR GUARDIAN AND WITHOUT PROVIDING SUCH PARENT OR GUARDIAN ACCESS TO SUCH PERSONAL WEB PAGE, TO REQUIRE THE OWNER OR OPERATOR TO ADOPT AND IMPLEMENT PROCEDURES TO CONFIRM THE IDENTITY AND AGE OF A PARENT OR GUARDIAN GRANTING PERMISSION, AND TO PROVIDE FOR PENALTIES; TO MAKE IT A FELONY FOR A REGISTERED SEX OFFENDER TO ACCESS A COMMERCIAL SOCIAL NETWORKING WEB SITE; TO INCREASE THE PENALTY FOR CERTAIN OFFENSES OF SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; TO MAKE IT A FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION; AND TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO CONTROLLED SUBSTANCES, TO AMEND THE PROCEDURE FOR CONVENING AN INVESTIGATIVE GRAND JURY, AND

TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE OFFICE OF THE COURTS FOR CONVENING INVESTIGATIVE GRAND JURIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

g. The lascivious exhibition of the genitals or pubic area of any person.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state."

SECTION 2. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 3. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class D felony."

SECTION 4. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class E felony."

SECTION 5. Article 13 of Chapter 66 is amended by adding a new section to read:

"**§ 66-67.4. Processors of photographic images or computer technicians to report photo, film, video, or computer images that contain pictures of a minor engaging in sexual activity.**

(a) As used in this section:

(1) "Computer technician" means any person who repairs, installs, or otherwise services any computer or computer network or system for compensation.

(2) "Processor of photographic images" means any person who, for compensation: (i) develops exposed photographic film into negatives, slides, or prints; (ii) makes prints from negatives, slides, digital images, or video; or (iii) develops, processes, transfers, edits, or enhances video or digital images.

(4) "Minor" has the same meaning as in G.S. 14-190.13.

(5) "Sexual activity" has the same meaning as in G.S. 14-190.13.

(b) Any processor of photographic images or any computer technician who, within the person's scope of employment, observes an image of a minor or a person who reasonably appears to be a minor engaging in sexual activity shall report the name and address of the person requesting the processing of the photographic images or the owner or person in possession of the computer or computer network or system to the Cyber

Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality in which the photographic image was submitted.

(c) An employee of a processor of photographic images or computer technician may satisfy the requirements of this section by reporting the required information to a person designated by the employer. The person designated by the employer shall then report as required by subsection (b) of this section.

(d) Any person, their employer, or a third-party complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report. In any proceeding involving liability, good faith is presumed."

SECTION 6. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is ~~a Class H felony.~~punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant or the person for whom the defendant was arranging the meeting in violation of this section actually appears at the meeting location, then the violation is a Class E felony."

SECTION 7. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) For purposes of this section, the term "official inquiry" means the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law.

(b) 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.

(c) In response to an official inquiry by a sworn agent of the State Bureau of Investigation, any person who shall willfully do any of the following is guilty of a Class H felony:

(1) Falsify or conceal by any trick, scheme, or device a material fact.

(2) Make any materially false, fictitious, or fraudulent statement or representation.

(3) Use any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry."

SECTION 8.(a) Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"§ 75-40. Requiring parental permission for minors to access commercial social networking Web sites.

(a) Findings. – The General Assembly finds all of the following:

(1) Commercial social networking Web sites are growing dramatically and have become widely used online communications tools. A significant percentage of minor children use these social networking Web sites.

(2) Because children post personal information on these sites that may be accessed by other users, these social networking Web sites have become a matter of State and national concern. In particular, adult sexual predators use these sites to identify, contact, and exploit children.

(3) While parents and legal guardians are primarily responsible for protecting the physical and psychological well-being of their children, protection of children from exploitation by sexual predators is a compelling governmental interest.

(4) Filtering software that prevents children from accessing social networking and other Web sites is commercially available but does not provide complete or even adequate protection to children from online sexual predators. Only a portion of households with minor children and Internet connections use filtering software that limits or prohibits access to such sites. Even if filters are used, a child may circumvent a filter by simply going to another location where the filter does not operate.

(5) Most commercial social networking Web sites attempt to separate children from adults by asking users for either their age or date of birth. A user can easily circumvent this barrier by misrepresenting his or her age.

(6) Requiring commercial social networking Web sites to obtain the permission of a parent or legal guardian before his or her child can enter and use a social networking Web site provides parents important assistance in protecting their children from harm on the Internet.

(7) Verifying the identity of a parent or guardian who then grants a minor permission to enter and use a social networking Web site makes it more difficult for the minor to bypass a barrier between children and adults. Identity verification therefore furthers and facilitates supervision of children by their parents and guardians and furthers the State's interest in protecting children from online sexual predators. Moreover, identity verification of adults is commercially available.

(8) While commercial social networking Web sites offer a forum for political discourse, friendships, and cultural developments, preserving this arena of expression must be balanced against the compelling State interest in protecting children from sexual predators. Providing parents the power to permit or deny their children's participation enhances the protection of children without unduly restricting expression.

(b) Definitions. – The following definitions apply in this section:

(1) Internet. – The global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(2) Person. – An individual, sole proprietor, partnership, corporation, limited liability company, trust, joint venture, or other legally cognizable entity.

(3) Protected computer. – Any computer that, at the time of an alleged violation of any provision of this section involving that computer, was located within the geographic boundaries of the State of North Carolina.

(4) Commercial social networking Web site. –

a. A commercial social networking Web site is an Internet Web site that (i) is operated by a person who derives revenue membership fees, advertising, or other sources related to the operation of the Web site; (ii) facilitates the social introduction between two or more persons for the purposes of friendship, meeting other persons, or information exchanges; (iii) allows users to create Web pages or personal profiles that contain information such as the name or nickname of the user, photographs placed on the personal Web page by the user, other personal information about the user, and links to other personal Web pages on the commercial social networking Web site of friends or associates of the user that may be accessed by other users or visitors to the Web site; and (iv) provides users or visitors to the commercial social networking Web site mechanisms to communicate with other users, such as a message board, chat room, electronic mail, or instant messenger.

b. A commercial social networking Web site does not include an Internet Web site (i) that provides only one of the following discrete services: photo-sharing, electronic mail, instant messenger, or chat room or message board platform; or (ii) the primary purpose of which is the facilitation of commercial transactions involving goods or services between its members or visitors.

(5) Hosting provider. – A commercial provider of Web hosting services where the provider does not determine the content to be hosted on the

Web site, but such content is determined in the discretion of the customer of the hosting provider. Creation, implementation, or enforcement of acceptable use policies by a hosting provider shall not mean that a hosting provider determines the content to be hosted on the Web site for purposes of this definition.

(c) No owner or operator of a commercial social networking Web site shall allow a minor using a protected computer to create or maintain a personal Web page on a social networking Web site without first obtaining the permission of the minor's parent or guardian and without providing the parent or guardian access to the personal Web page at all times the commercial social networking Web site is operational.

(d) Any owner or operator of a social networking Web site shall adopt and implement procedures to confirm the identity and age of parents or guardians who are providing permission for their minor children and members at the time of registration by independently validating the accuracy of personal identification information submitted at the time of registration.

(e) Violation of any provision of this section shall constitute an unfair and deceptive trade practice under Chapter 75-1.1 of the General Statutes. For the purposes of this section, each day that an owner or operator of a commercial social networking Web site fails to adopt and implement the procedures required of this section shall constitute a separate and distinct violation.

(f) This section shall not apply to an Internet service or hosting provider by reason of such provider's transmitting, routing, or providing connections for information sent or received from a commercial social networking Web site, or by reason of hosting the commercial social networking Web site, at the direction of a user or customer; provided that the Internet service or hosting provide does not profit directly from the activities of the commercial social networking Web site or intentionally aid and abet a violation of this section."

SECTION 8.(b) Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-202.3. Ban use of commercial social networking Web sites by sex offenders.**

(a) Offense. – It is unlawful for a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access a commercial social networking Web site, as defined in G.S. 75-40, that permits minor children to become a member or to create or maintain a personal Web page on a commercial social networking Web site.

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

(c) Punishment. – A violation of this section is a Class G felony.

SECTION 9.(a) Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Investigative grand jury.**

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission of or conspiracy to commit any of the following:

(1) The misdemeanor or felony offense of obstruction of justice (Common law offense).

(2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).

(3) A violation of G.S. 14-90 (Embezzlement of property received by virtue of office or employment), G.S. 14-100 (Obtaining property by false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of notes, checks, and other securities; counterfeiting of instruments).

(4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the dissemination of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).

(5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).

(6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening), G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to discharge duties), G.S. 14-234 (Public officers or employees benefiting from public contracts), or G.S. 14-234.1 (Misuse of confidential information).

(7) A violation of G.S. 14-254 (Malfeasance of corporation officers and agents).

(8) A violation of Article 37 of Chapter 14 of the General Statutes (Relating to lotteries, gaming, bingo, and raffles).

(9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled substances and continuing criminal enterprises).

(10) A violation of Article 20, 22, or 22A of Chapter 163 of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulation of contributions and expenditures in political campaigns).

(b) Appointment of Permanent Three-Judge Panel to Determine Whether to Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years thereafter, the Chief Justice shall appoint a permanent panel of three superior court judges to determine whether to order an investigative grand jury convened under this section. The panel of judges shall be appointed to serve for a term of two years. The Chief Justice shall fill any vacancy that occurs on the panel before the two-year term ends.

(c) Procedure for Determining Whether to Convene Investigative Grand Jury. – A written petition for convening of an investigative grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina

Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the petition to the panel of three judges established under subsection (b) of this section to determine whether to order the grand jury convened. An investigative grand jury under this section may be convened if the three-judge panel determines all of the following:

(1) The petition alleges the commission of or a conspiracy to commit any of the offenses listed in subsection (a) of this section, any part of which violation or conspiracy occurred in the county where the proposed investigative grand jury sits or will sit, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury.

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed.

A grand jury authorized by this section may be convened from an existing grand jury or grand juries authorized by G.S. 15A-622(b) or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding G.S. 15A-622(b), grand jurors impaneled pursuant to this section shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(d) Investigative Grand Jury Proceedings and Operations. – If an investigative grand jury is convened pursuant to this section, notwithstanding G.S. 15A-623(d), a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, the prosecutor may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with the witness's counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding G.S. 15A-623(e), the record of the examination of

witnesses shall be made available to the examining prosecutor, and the prosecutor may disclose contents of the record to other investigative or law enforcement officers, the witness or the witness's attorney to the extent that the disclosure is appropriate to the proper performance of the prosecutor's official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this section may be made upon written order of a superior court judge if the judge determines disclosure is essential:

(1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or

(2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to this section, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A of the General Statutes. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court."

SECTION 9.(b) G.S. 15A-622(h) is repealed.

SECTION 9.(c) G.S. 15A-623(h) is repealed.

SECTION 10. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of seventy-five thousand dollars ($75,000) for the 2007-2008 fiscal year for expenses associated with administration of investigative grand juries convened pursuant to G.S. 15A-632, as enacted by section 9.(a) of this act.

SECTION 11. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 12. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 132:
Protect Children From Sexual Predators Act

BILL ANALYSIS

Committee:	Senate Judiciary ll (Criminal)	**Date:**	May 10, 2007
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S132-CSRI-1 [v.9]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 132 would: (i) amend the definition of "sexual activity" as it relates to offenses concerning minors; (ii) require that a processor of photographic images or computer technician who, in the course of work, encounters an image of a minor engaging in sexual activity must report the name of the customer requesting the work to the appropriate authorities; (iii) make it unlawful for the owner or operator of a social networking Web site to allow a minor using a protected computer to create or maintain a personal Web page on a social networking Web site without the permission of the minor's parent or guardian and without providing such parent or guardian access to such personal Web page; (iv) make it a Class G felony for a registered sex offender to access a commercial social networking Web site where minors are members or maintain personal Web pages; (v) make it a Class H felony to lie to a sworn SBI agent conducting an official investigation; (vi) increase penalties for several offenses, including solicitation of a child by computer to commit an unlawful sex act, and 1st, 2nd, and 3rd degree sexual exploitation of a minor; (vii) authorize the convening of a grand jury to investigate allegations regarding the commission or conspiracy to commit a number of listed crimes; and (viii) appropriate $75,000 to the Administrative Office of the Courts (AOC) to cover the costs of administration associated with investigative grand juries convened as provided in herein.***

BILL ANALYSIS:

- **The PCS would amend the definition of "sexual activity" as it relates to offenses concerning minors to include "[t]he lascivious exhibition of the genitals or public area of any person."** This language is included in federal law (18 USCS § 2256).
- **The PCS would require processors of photographic images or computer technicians who, in the course of work, encounter an image of a minor or a person who appears to be a minor engaging in sexual activity must report the name of the customer requesting the work to the Cyber Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality.** A person complying with this provision in good faith would be immune from civil or criminal liability that might be incurred as a result of such a report.
- **The PCS would create several new offenses:**
  - Make it unlawful for the owner or operator of a commercial social networking web site to allow a minor to create or maintain a personal Web page on the site without the permission of the minor's parent or guardian and without providing such parent or guardian access to the personal web page. The PCS would also require the owner or operator to adopt and implement procedures to confirm the identity and age of a parent or guardian granting permission A violation by an owner or operator would be punishable as an unfair and deceptive trade practice under Ch. 75 of the General Statutes, for which a civil penalty of up to $5,000 may be imposed for each violation. Under the PCS, each day that an owner or

operator of a commercial social networking Web site fails to adopt and implement the procedures required of this section constitutes a separate and distinct violation.

- Make it a Class G felony[1] for a registered sex offender to access a commercial social networking web site that permits minors to become members or create personal Web pages.
- Make it a Class H felony to lie to a sworn SBI agent in response to an official inquiry.

  The PCS defines "*official inquiry*" as "the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law."

➢ **The PCS would increase penalties for several offenses as follows:**

Offense	Current Penalty	Proposed Penalty
1st degree sexual exploitation of a minor (GS 14-190.16)	Class D felony	[2]Class C felony
2nd degree sexual exploitation of a minor (GS 14-190.17)	Class F felony	[3]Class D felony
3rd degree sexual exploitation of a minor (GS 14-190.17A)	Class I felony	[4]Class E felony
Solicitation of child by computer to commit an unlawful sex act (GS 14-202.3)	Class H felony	Class H felony, except if the defendant or person the defendant has made arrangements for actually appears at the meeting in which case it is a Class E felony

➢ **The PCS would create a new statute that authorizes the convening of a grand jury to investigate allegations regarding the commission or conspiracy to commit a number of listed crimes.** It would require that the Chief Justice appoint a permanent panel of three superior court judges every two years (beginning Dec. 1, 2007) to determine whether to order an investigative grand jury.

The PCS would repeal certain statutes that authorize convening of a grand jury to investigate allegations of crimes involving controlled substances. These provisions are incorporated into the new statute, except for requirements under the existing law concerning approval of grand jury petitions by three members of the NC Conference of District Attorneys, and that the Attorney General and the Clerk of the NC Supreme Court concur in the petition.

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[1] The presumptive range of punishment for a Class G felony when there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment.

[2] The presumptive range of punishment for a Class C felony when there are no prior convictions is 58 to 73 months of active punishment.

[3] The presumptive range of punishment for a Class D felony when there are no prior convictions is 51 to 64 months of active punishment.

[4] The presumptive range of punishment for a Class E felony when there are no prior convictions is 20 to 25 months of intermediate or active punishment.

- **The PCS would appropriate $75,000 to the AOC to cover the costs of administration associated with investigative grand juries convened as provided in this PCS.**

EFFECTIVE DATE: The PCS would become effective December 1, 2007, and apply to offenses committed on or after that date.

S0132e1-SMRI-CSRI-1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 930

Short Title:	Private Correctional Officers.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Judiciary II (Criminal).	

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GRANTING AUTHORITY TO PRIVATE CORRECTIONAL OFFICERS EMPLOYED PURSUANT TO A CONTRACT WITH THE FEDERAL BUREAU OF PRISONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-37.3 reads as rewritten:

"**§ 148-37.3. Authority of private correctional officers employed pursuant to a contract with the Federal Bureau of Prisons.**

(a) Correctional officers and security supervisors employed at private correctional facilities pursuant to a contract between their employer and the Federal Bureau of Prisons may, in the course of their employment as correctional officers or security supervisors, use necessary force and make arrests consistent with the laws applicable to the North Carolina Department of Correction, which force shall not exceed that authorized to Department of Correction officers, provided that ~~the Department of Correction determines that as of August 18, 2001,~~ the employment policies of such private corporations meet the same minimum standards and practices followed by the Department of Correction in employing its correctional personnel, and if:

(1) Those correctional officers and security supervisors have been certified as correctional officers as provided under Chapter 17C of the General Statutes; or

(2) Those correctional officers and security supervisors employed by the private corporation at the facility have completed a training curriculum that ~~the Department of Correction has determined~~ meets or exceeds the standards required by the North Carolina Criminal Justice Education and Training Standards Commission for correctional personnel. ~~The Department may require that it be notified of the names and positions of such persons prior to such persons beginning duties at the correctional facility, and the names and positions of those persons already employed at the correctional facility on August 18, 2001 and~~

~~that the Department be notified when any such person is no longer employed in such duties at the correctional facility.~~

(b) Any private corporation described in subsection (a) of this section shall without limit defend, indemnify, and hold harmless the State, its officers, employees, and agents from any claims arising out of the operation of the private correctional facility, or the granting of the powers authorized under this section, including any attorneys' fees or other legal costs incurred by the State, its officers, employees, or agents as a result of such claims.

(c) Any private corporation described in subsection (a) of this section shall reimburse the State and any county or other law enforcement agency for the full cost of any additional expenses incurred by the State or the county or other law enforcement agency in connection with the pursuit and apprehension of an escaped inmate from the facility.

In the event of an escape from the facility, any private corporation described in subsection (a) of this section shall immediately notify the sheriff in the county in which the facility is ~~located and shall notify the Department of Correction which~~ located, who shall cause an immediate entry into the State Bureau of Investigation Division of Criminal Information network. The sheriff of the county in which the facility is located shall be the lead law enforcement officer in connection with the pursuit and apprehension of an escaped inmate from the facility.

(d) Any private corporation described in subsection (a) of this section must maintain in force liability insurance to satisfy any final judgment rendered against the private corporation or the State, its officers, employees, and agents that arises out of the operation of the correctional facility or the indemnification requirements in subsection (b) of this section. The minimum amount of liability insurance that will be required under this section is ten million dollars ($10,000,000) per occurrence, and twenty-five million dollars ($25,000,000) aggregate per occurrence. The private corporation shall ensure that its insurance company shall provide the ~~Department of Correction~~ Secretary of State with a current Certificate of Insurance evidencing compliance with the requirements of this subsection ~~within 10 days of August 18, 2001 and annually thereafter.~~ on July 1 of each year.

(e) The Department of ~~Correction~~ Justice shall adopt rules to implement the provisions of this section.

(f) The authority set forth in this section to use necessary force and make arrests shall be in addition to any existing authority set forth in the statutory or common law of the State, but shall not exceed the authority to use necessary force and make arrests set out in subsection (a) of this section.

(g) A private corporation described in subsection (a) of this section shall bear the reasonable costs of services provided by the ~~Department of Correction~~ State, its officers, employees, and agents for the corporation. The amount of the costs shall be determined by the ~~Secretary of the Department.~~ Attorney General.

(h) This section is effective August 18, 2001 and applies to private correctional facilities and the employees of those correctional facilities constructed and contracted to be operated by August 18, 2001."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 930
PROPOSED COMMITTEE SUBSTITUTE S930-CSRC-31 [v.1]

5/8/2007 9:55:43 PM

Short Title: Private Correctional Officers. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GRANTING AUTHORITY TO PRIVATE CORRECTIONAL OFFICERS EMPLOYED PURSUANT TO A CONTRACT WITH THE FEDERAL BUREAU OF PRISONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-37.3 reads as rewritten:

"**§ 148-37.3. Authority of private correctional officers employed pursuant to a contract with the Federal Bureau of Prisons.**

(a) Correctional officers and security supervisors employed at private correctional facilities pursuant to a contract between their employer and the Federal Bureau of Prisons may, in the course of their employment as correctional officers or security supervisors, use necessary force and make arrests consistent with the laws applicable to the North Carolina Department of Correction, which force shall not exceed that authorized to Department of Correction officers, provided that ~~the Department of Correction determines that as of August 18, 2001,~~ the employment policies of such private corporations meet the same minimum standards and practices followed by the Department of Correction in employing its correctional personnel, and if:

(1) Those correctional officers and security supervisors have been certified as correctional officers as provided under Chapter 17C of the General Statutes; or

(2) Those correctional officers and security supervisors employed by the private corporation at the facility have completed a training curriculum that ~~the Department of Correction has determined~~ meets or exceeds the standards required by the North Carolina Criminal Justice Education and Training Standards Commission for correctional personnel. ~~The Department may require that it be notified of the names and positions of such persons prior to such persons beginning duties at the correctional facility, and the names and positions of those persons~~

~~already employed at the correctional facility on August 18, 2001 and that the Department be notified when any such person is no longer employed in such duties at the correctional facility.~~

(b) Any private corporation described in subsection (a) of this section shall without limit defend, indemnify, and hold harmless the State, its officers, employees, and agents from any claims arising out of the operation of the private correctional facility, or the granting of the powers authorized under this section, including any attorneys' fees or other legal costs incurred by the State, its officers, employees, or agents as a result of such claims.

(c) Any private corporation described in subsection (a) of this section shall reimburse the State and any county or other law enforcement agency for the full cost of any additional expenses incurred by the State or the county or other law enforcement agency in connection with the pursuit and apprehension of an escaped inmate from the facility.

In the event of an escape from the facility, any private corporation described in subsection (a) of this section shall immediately notify the sheriff in the county in which the facility is ~~located and shall notify the Department of Correction which~~ located, who shall cause an immediate entry into the State Bureau of Investigation Division of Criminal Information network. The sheriff of the county in which the facility is located shall be the lead law enforcement officer in connection with the pursuit and apprehension of an escaped inmate from the facility.

(d) Any private corporation described in subsection (a) of this section must maintain in force liability insurance to satisfy any final judgment rendered against the private corporation or the State, its officers, employees, and agents that arises out of the operation of the correctional facility or the indemnification requirements in subsection (b) of this section. The minimum amount of liability insurance that will be required under this section is ten million dollars ($10,000,000) per occurrence, and twenty-five million dollars ($25,000,000) aggregate per occurrence. ~~The private corporation shall ensure that its insurance company shall provide the Department of Correction with a current Certificate of Insurance evidencing compliance with the requirements of this subsection within 10 days of August 18, 2001 and annually thereafter.~~

~~(e) The Department of Correction shall adopt rules to implement the provisions of this section.~~

(f) The authority set forth in this section to use necessary force and make arrests shall be in addition to any existing authority set forth in the statutory or common law of the State, but shall not exceed the authority to use necessary force and make arrests set out in subsection (a) of this section.

(g) A private corporation described in subsection (a) of this section shall bear the reasonable costs of services provided by the ~~Department of Correction~~ State, its officers, employees, and agents for the corporation. The amount of the costs shall be determined by the ~~Secretary of the Department.~~member of the Council of State or Cabinet member of the agency or department that provided the services.

(h) This section is effective August 18, 2001 and applies to private correctional facilities and the employees of those correctional facilities constructed and contracted to be operated by August 18, 2001."

SECTION 2. This act becomes effective July 1, 2007.

SENATE BILL 930:
Private Correctional Officers

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 9, 2007
Introduced by:	Sen. Jones	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S930-CSRC-31		

SUMMARY: ***Senate Bill 930 would remove the Department of Corrections from any oversight authority for correctional officers and security supervisors employed by a private correctional facility that is operated on behalf of the Federal Bureau of Prisons.***

CURRENT LAW: In 2001, the General Assembly enacted G.S. 148-37.3 in response to the opening of the federal prison operated by a private corporation. The statute attempts to place with the North Carolina Department of Corrections oversight authority for the correctional officers and security supervisors employed at the prison. It also required the facility to provide DOC with a copy of its Certificate of Insurance. However, due to the fact that the company that employs the correctional officers and security supervisors contracts with the federal government, DOC has no authority to enforce these requirements.

S0930e1-SMRC-CSRC-31

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1202

Short Title:	Litter Violation Reported by Citizen.	(Public)
Sponsors:	Senator Jacumin.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CITATION MAY BE ISSUED FOR A LITTERING OFFENSE THAT INVOLVES THE OPERATION OF A MOTOR VEHICLE BASED ON THE AFFIDAVIT OF A WITNESS.

The General Assembly of North Carolina enacts:

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

"**§ 14-399.3. Civil penalty for litter may be assessed based on witness's affidavit.**

(a) Reporting of Litter Violation. – Any North Carolina resident who witnesses a littering violation under G.S.14-399 that involves the operation of a motor vehicle may file a sworn affidavit reporting the incident with a magistrate in the county in which the violation occurred. The affidavit may be mailed by first-class mail to the magistrate in the appropriate county. The affidavit shall include the license plate of the vehicle involved in the violation, a description of the vehicle, and the date, location, and approximate time of the violation.

(b) Citation Issued. – The magistrate shall issue a citation to the owner of the vehicle based on the affidavit filed by the witness. The citation shall clearly state the violation, the penalty for the violation, the procedure for paying the civil penalty assessed, and the manner in which the violation may be challenged. The citation shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration.

(c) Responsibility of Vehicle Owner and Procedure for Challenging the Violation. – Notwithstanding G.S. 14-399.3(b) the owner of the vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes to a magistrate of the county that issued the citation the following:

(1) The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

(2) An affidavit stating that the vehicle involved was at the time stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(d) Civil Penalties. – Notwithstanding G.S. 14-399, a violation enforced under this section shall be a noncriminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed. If the vehicle owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional civil penalty for failure to respond not to exceed twenty-five dollars ($25.00). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The actual costs of collection, not to exceed twenty percent (20%) of the amount collected shall be remitted to the clerk of court to be credited to the office of the magistrate.

(e) Administrative Office of the Courts to Establish Collection and Appeal Procedures. – The Administrative Office of the Courts shall establish procedures for the collection of the penalties assessed under this section and may enforce the penalties by civil action in the nature of debt."

SECTION 2. G.S. 7A-292 is amended by adding the following new subdivisions to read:

"(15) To accept the filing of affidavits reporting litter violations and to issue citations pursuant to G.S. 14-399.3.

(16) To hear and enter judgment in all litter cases appealed under G.S. 14-399.3."

SECTION 3. By December 1, 2007, the Administrative Office of the Courts shall develop an affidavit form that may be used to report a violation as provided by G.S. 14-399.3. The Administrative Office of the Courts shall provide the forms to each magistrate in the State and shall also make the form accessible to the public through the Internet. Each magistrate shall make the printed forms available to any member of the general public who requests one.

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1407

Short Title:	Resale of Tickets via Internet.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS FROM UNLAWFUL SALE OF ADMISSION TICKETS IN EXCESS OF THE PRINTED PRICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 44 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-344.1. Internet sale of admission tickets in excess of printed price.**

(a) Notwithstanding G.S. 14-344, nothing shall prohibit the resale or offering for resale via the Internet of an admission ticket, at any price, to an athletic contest, dance, theater, concert, circus, or other amusement, if the organizer of the event or the operator of the location where the event is occurring authorize admission tickets to the event to be resold for more than the price printed on the face of the ticket. If such resale is authorized, any admission ticket to the event may be resold or offered for resale through any Web site if the Web site's operator guarantees a full refund of the amount paid for the ticket under each of the following conditions:

(1) The ticketed event is cancelled.

(2) The purchaser is denied admission to the ticketed event, unless the denial is due to the action or omission of the purchaser.

(3) The ticket is not delivered to the purchaser in the manner described on the Web site or pursuant to the delivery guarantee made by the reseller and the failure results in the purchaser's inability to attend the ticketed event.

(b) A Web site operator's guarantee pursuant to this section shall be posted on the operator's Web site and a prospective purchaser shall be directed to such guaranty before completion of the resale transaction.

(c) A refund issued by a Web site operator pursuant to any of the conditions provided for in this section shall include any service, handling, or processing fees unless the fees are declared nonrefundable under the terms of the guarantee.

(d) If authorization to resell an admission ticket for more than the price printed on the face of the ticket is not granted by the organizer of the event or the operator of the location of the event pursuant to this section, no person or entity shall resell an admission ticket for more than the price printed on the face of the ticket.

(e) The provisions of this section shall not apply to student tickets issued by institutions of higher education in North Carolina for sporting events."

SECTION 2. Article 44 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-344.1. Bar on purchasing tickets in excess of maximum ticket limit.**

(a) For purposes of this section, the term "original ticket seller" means the issuer of a ticket or a person or firm who provides distribution services or ticket sales services under a contract with the issuer.

(b) Whoever knowingly purchases from the original ticket seller a quantity of tickets to an event that exceeds the maximum ticket limit quantity posted by or on behalf of the original ticket seller at the point of original sale or printed on the tickets themselves and intends to resell such tickets shall be in violation of G.S. 75-1.1.

(c) A person or firm is not liable under this section with respect to tickets for which that person or firm is the original ticket seller."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1430

Short Title: Amend Crim Offenses/Injury to Property. (Public)

Sponsors: Senator Atwater.

Referred to: Judiciary II (Criminal).

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSES OF INJURING REAL PROPERTY AND INJURING PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-127 reads as rewritten:

"**§ 14-127. Willful and wanton injury to real property.**

~~If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.~~

(a) Any person who willfully and wantonly damages, injures, or destroys any real property, either of a public or private nature, is guilty of a criminal offense punishable as follows:

(1) If the damage is one thousand dollars ($1,000) or less, the offense is a Class 1 misdemeanor.

(2) If the damage exceeds one thousand dollars ($1,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class H felony.

(3) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class D felony.

(b) This section applies to injuries to real property without regard to whether the property is destroyed or not."

SECTION 2. G.S. 14-160 reads as rewritten:

"**§ 14-160. Willful and wanton injury to personal property; punishments.**

(a) ~~If any person shall wantonly and willfully injure the personal property of another he shall be guilty of a Class 2 misdemeanor.~~ Any person who wantonly and willfully injures the personal property of another is guilty of a criminal offense punishable as follows:

(1) If the damage is two hundred dollars ($200.00) or less, the offense is a Class 2 misdemeanor.

(2) If the damage exceeds two hundred dollars ($200.00) but does not exceed one thousand dollars ($1,000), the offense is a Class 1 misdemeanor.

(3) If the damage exceeds one thousand dollars ($1,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class I felony.

(4) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class D felony.

~~(b) Notwithstanding the provisions of subsection (a), if any person shall wantonly and willfully injure the personal property of another, causing damage in an amount in excess of two hundred dollars ($200.00), he shall be guilty of a Class 1 misdemeanor.~~

(c) This section applies to injuries to personal property without regard to whether the property is destroyed or not."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

Principal Clerk ____
Reading Clerk ____

Please note the change in time. 9:00am to 11:00am

Corrected copy 2

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 15, 2007	9.00 – 11.00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 1491	Adjust Penalty/Arson & Larceny.	Senator Hartsell
SB 132	Protect Children From Sexual Predators Act.	Senator Dalton
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1407	Resale of Tickets via Internet.	Senator Hartsell
SB 1430	Amend Crim Offenses/Injury to Property.	Senator Atwater
SB 728	Mediation in District Criminal Courts.	Senator Hartsell
SB 854	Amend Private Protective Services Act.	Senator Snow
SB 1019	Investigations of Corporations/Partnerships.	Senator Hartsell
SB 1023	Local SPA Employee Status/Appeals.	Senator Hartsell
SB 1432	Challenge To Administrative Subpoena.	Senator Atwater

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 15, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 728	Mediation in District Criminal Courts.	Senator Hartsell
SB 854	Amend Private Protective Services Act.	Senator Snow
SB 1019	Investigations of Corporations/Partnerships.	Senator Hartsell
SB 1023	Local SPA Employee Status/Appeals.	Senator Hartsell
SB 1432	Challenge To Administrative Subpoena.	Senator Atwater

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

PROPOSED BILLS FOR May 15, 2007

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 15, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 728	Mediation in District Criminal Courts.	Senator Hartsell
SB 854	Amend Private Protective Services Act.	Senator Snow
SB 1019	Investigations of Corporations/Partnerships.	Senator Hartsell
SB 1023	Local SPA Employee Status/Appeals.	Senator Hartsell
SB 1432	Challenge To Administrative Subpoena.	Senator Atwater

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, May 15, 2007, 9:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1359	Red Light Exception for Motorcycles.	Senator Allran
SB 1491	Adjust Penalty/Arson & Larceny.	Senator Hartsell
SB 132	Protect Children From Sexual Predators Act.	Senator Dalton
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1407	Resale of Tickets via Internet.	Senator Hartsell
SB 1430	Amend Crim Offenses/Injury to Property.	Senator Atwater
SB 728	Mediation in District Criminal Courts.	Senator Hartsell
SB 854	Amend Private Protective Services Act.	Senator Snow
SB 1019	Investigations of Corporations/Partnerships.	Senator Hartsell
SB 1023	Local SPA Employee Status/Appeals.	Senator Hartsell
SB 1432	Challenge To Administrative Subpoena.	Senator Atwater

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 15, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on May 15, 2007, with fourteen members present.

Senator Hartsell introduced Mr. Dan Conrad and Ms. Sarah Oettinger, both law students and summer interns with the Legislative Research Division. He then introduced pages Polly Etters, William Cooper, Robbie Bell and Kirk Hemingway and thanked them for their service.

SB 132 (Protect Children From Sexual Predators Act.) Senator Dalton was recognized to continue the bill from the previous meeting and recognized Attorney Jay Chaudhuri, representing the North Carolina Justice Department, to give additional information. Attorney Chaudhuri and Senator Dalton answered questions from committee members. Mr. Branden Cox from Net Choice, Mr. John Cardillo from Sentry and Mr. Jeff Schmidt from Authis spoke in opposition to the bill. Attorney Tom Keith spoke on the bill. Senator Apodaca presented an amendment and moved that it be accepted. All voted and the motion carried. Senator Jones, also, presented an amendment and moved that it be accepted. All voted and the motion carried. Senator Dalton moved for a favorable report as amended, unfavorable to the original bill, and rolled into a new committee substitute, with a referral to Appropriations.

SB 1359 (Red Light Exception for Motorcycles.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator East so moved, all voted and the motion carried. Senator Allran explained the bill. Senator Bingham moved for a favorable report, unfavorable to the original bill, all voted and the motion carried.

SB 1491 (Adjust Penalty/Arson & Larceny.) As this was Senator Hartsell's bill, Senator Allran presided. Senator Bingham moved to accept the Proposed Committee Substitute for purposes of discussion. Senator Hartsell explained the bill. Senator Jones moved for a favorable report, unfavorable to the original bill, all voted and the motion carried.

SB 1202 (Littler Violation Reported by Citizen.) Senator Bingham moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Jacumin was recognized to explain the bill. After much discussion, Senator Hartsell noted that the bill would be withdrawn for the present and a sub-committee, with Senators Jacimin, Allran and Queen, would be named to work on the bill.

SB 728 (Mediation in District Criminal Courts.) As this was Senator Hartsell's bill, Senator Jones presided and asked Senator Hartsell to explain the bill. Senator Hartsell introduced Judge Steelman who then recommended that Attorney. Frank C. Laney, Circuit Mediator, continue the explanation. Questions from Senators Jones, and Queen were answered by Mr. Laney. Senator Bingham moved for a favorable report, all voted and the motion carried.

SB 1023 (Local SPA Employee Status/Appeals.) As this was Senator Hartsell's bill, Senator Jones presided. Senator Jones asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Bingham so moved, all voted and the motion carried. Senator Hartsell explained the bill. Senator Bingham moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 1432 (Challenge To Administrative Subpoena.) Senator Atwater was recognized to explain the bill. He presented an amendment and moved that it be adopted. All voted and the motion carried. Senator Bingham moved for a favorable report as amended, unfavorable to the original bill, and rolled into a new committee substitute. All voted and the motion carried.

SB 1430 (Amend Crim Offenses/Injury to Property.) Senator Atwater was recognized to explain the bill. Senator East moved for a favorable report. Senator Hartsell noted the motion and stated that the motion would be held. Due to questions, the bill was withdrawn until the Thursday meeting.

SB 1407 (Resale of Tickets via Internet.) Senator Jones was requested to preside and asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Apodaca so moved, all voted and the motion carried. Senator Hartsell explained the bill and recognized Attorney Sandy Sands, representing Ticket Master, to continue the explanation. Mr. Jared Smith, also representing Ticket Master, spoke on the bill. Speaking in opposition to the bill was Mr. Bill Scoggins, representing E-Bay and Mr. Dusty Brighton, Sr. Manager for State Government Relations, also with E-Bay. Senator Bingham moved for a favorable report, unfavorable to the original bill, with a referral to Finance.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, May 16, 2007

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

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

S.B. **1023** Local SPA Employee Status/Appeals.

Draft Number:	PCS 85315
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1359** Red Light Exception for Motorcycles.

Draft Number:	PCS 15088
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Braden Cox	Association for Competitive Technology 1401 K St NW Ste 502 Washington DC 20005
Jeff Schmidt	Authis Three Fountain Plaza Reston, VA 92012
John Cardillo	SENTINEL 701 Brickell Ave Suite 1570 Miami FL 33131
S.C. Kitchen	County of Durham P.O. Box 3508 Durham, NC 27702
Jurgen Kostgaver	CAN
Beyonce	MTV
Don OVERBY	ALJ
Frank Laney	Dispute Resolution Commission 409 Accolade Dr Cary 27513
David L Blubaugh	Dispute Resolution Commission
Jerry Rattley	NC DOJ / SBI
John Bason	AGO

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Josh Stein	NC DOJ
Brenda Menard	"
Matthew Calabria	"
BILL WEIS	SBI
Erik A. Hooks	SBI
DUC SKI	CBD / ABOTE ↔ NC BIKE-PAC
Joe & Henri McClees	McClees Consulting
Tracy Kimbrell	Parker Poe
Amy McConkey	Smith Anderson
BRUCE TUCKER	CAPITOL ADVANTAGE
ROBERT BLOUNT	RBR

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Fitzpatrick	Fitzpatrick Communications
Doug Misken	Capstrat
Angie Harris	Williams Mullen
Elizabeth Dalton	NCRMA
[illegible]	NCRMA
W. Ray	Office of Lt. Gov.
Lynn Weeks	SOS NC
Elbert Wilson	SOS
Rodney Maddox	NC SOS
Troy D. Page	NC Sentencing Commission
Kevin Leonard	WCSR

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brad Greenway	District Atty 29A
Ron Moore	Dist Atty 28th
Peg Dorer	Conference of D.A.s
John Snyder	District Attorney 20-B
Kimberly Overton	Conference of D.A.s
Amber Lucken Barwick	Conference of DAs
USA Kimbrough	NCCASA
Hilary Cooper	NCCASA
Stephanie Brooks	ESC/NC
Dewey Hudson	DA/ 4th
Scott Mason	Lowes

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dave Ham	SAL
Laura Parker	DAs Conference
Justin Brighton	eBay, Inc.
Bill Scoggins	KCC
Jared Smith	Ticketmaster
Sandy Sanders	WCSR
A Weigl	NSO
Kate Boldman	
Jim Schumacher	WTVD-TV

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Stewart	FNC
Bill Coggin	KCC
[illegible]	eBay, Inc.
Daniel Baum	Kennedy Covington
Daley Haynes	SOS
John Motsinger	Gov Office
[illegible]	JCSR
S.C. Kitchen	Durham County
Jared Smith	Ticketmaster
Sandy Sands	WCSP
Amy McConkey	Smith Anderson
Jane Royall	NC Family Policy Council

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-15-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	10G - Daily Bulletin
Stephanie Board	ESC / NC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 15, 2007

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

FAVORABLE

S.B. **728** Mediation in District Criminal Courts.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DRIVER OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other vehicle was sitting or standing at the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The inductive loop that actuated the traffic signal was not activated by the motorcycle.

(6) At least one full traffic signal light cycle had occurred or a minimum of three minutes has elapsed prior to entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1359

Judiciary II (Criminal) Committee Substitute Adopted 4/24/07
PROPOSED COMMITTEE SUBSTITUTE S1359-CSRI-8 [v.2]

5/2/2007 3:24:34 PM

Short Title: Red Light Exception for Motorcycles. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE OPERATOR OF A MOTORCYCLE TO PROCEED THROUGH AN INTERSECTION CONTROLLED BY A TRAFFIC SIGNAL ONLY IF THE TRAFFIC SIGNAL USES AN INDUCTIVE LOOP VEHICLE SENSOR THAT ACTIVATES THE TRAFFIC SIGNAL AND THE INDUCTIVE LOOP FAILS TO DETECT THE MOTORCYCLE AND ACTIVATE THE TRAFFIC SIGNAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-158 is amended by adding a new subsection to read:

"**§ 20-158. Vehicle control signs and signals.**

...

(e) Defense. – It shall be a defense to a violation of subsection (b)(2)a. of this section if the operator of a motorcycle, as defined in G.S. 20-4.01(27)d., shows all of the following:

(1) The operator brought the motorcycle to a complete stop at the intersection or stop bar where a steady red light was being emitted in the direction of the operator.

(2) The intersection is controlled by a vehicle actuated traffic signal using an inductive loop to activate the traffic signal.

(3) No other motor vehicle, with the exception of a motorcycle or motorcycles, was sitting at, traveling through, or approaching the intersection.

(4) No pedestrians were attempting to cross at or near the intersection.

(5) The motorcycle operator who received the citation waited a minimum of three minutes at the intersection or stop bar where the steady red light was being emitted in the direction of the operator before entering the intersection."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1359:
Red Light Exception for Motorcycles

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 3, 2007
Introduced by:	Sen. Allran	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition S1359-CSRI-8		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1359 would provide an affirmative defense to motorcycle operators who violate the statutory prohibition against entering an intersection when facing a red light if the motorcycle operator shows all of the following: (i) the operator came to a complete stop at the red light; (ii) the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal, (iii) no other motor vehicles, with the exception of a motorcycle, were at, traveling through, or approaching the intersection; (iv) no pedestrians were attempting to cross at or near the intersection; and (v) the operator waited a minimum of three minutes at the red light prior to entering the intersection.***

CHANGES MADE BY PCS S1359-CSRI-8:

- Deletes references to bicycles.
- Adds "traveling through" to subdivision (3).
- Clarifies language in subdivision (5).

CURRENT LAW: Under current law (G.S. 20-158(b)(2)a.), vehicles facing a red light must stop and are prohibited from entering the intersection while the light is red (other than to make a lawful right turn). Running a red light is an infraction punishable by a fine of not more than $100.00 (G.S. 20-176). The Division of Motor Vehicles assigns three points to a person's record for running a red light (G.S. 20-16).

With regard to the issue of the bill's impact on negligence/contributory negligence, G.S. 20-158(d) provides that "No failure to stop as required by the provisions of this section shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether a party was guilty of negligence or contributory negligence."

BILL ANALYSIS: The PCS would provide a motorcycle operator who violates the statutory prohibition against entering an intersection when facing a red light an affirmative defense if the operator shows all of the following:

- the operator came to a complete stop at the red light;
- the intersection was controlled by a vehicle actuated traffic signal using an inductive loop to activate the signal;
- no other motor vehicles were at, traveling through, or approaching the intersection;
- no pedestrians were attempting to cross at or near the intersection; and
- the operator waited a minimum of three minutes at the red light prior to entering the intersection.

BACKGROUND: Actuated traffic signals alter their sequence based on demand, and are activated by vehicle detectors. With an actuated traffic signal, once a vehicle is detected by a sensor, the traffic signal will initiate a change in, or extension of, a traffic signal phase (e.g., change a red light to green). A common kind of vehicle detector used to govern actuated traffic signals is a **loop detector**. A loop detector works like a metal detector, it reacts to the presence of metal (or an electromagnetic field). The sensitivity of a loop detector varies due to a number of parameters. Depending on the sensitivity of a detector, the presence of a motorcycle may not trigger a change in the traffic signal.

Tennessee, Arkansas, Idaho, and Minnesota have enacted laws similar to the provisions of Senate Bill 1359.

EFFECTIVE DATE: The PCS would become effective December 1, 2007, and apply to offenses committed on or after that date.

S1359e2-SMRI-CSRI-8

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1491*

Short Title:	Adjust Penalty/Arson & Larceny.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR SECOND DEGREE ARSON AND TO AMEND THE PENALTY FOR CERTAIN OFFENSES OF LARCENY, EMBEZZLEMENT, AND OBTAINING PROPERTY BY FALSE PRETENSES BY AMENDING THE VALUE RANGES TO WHICH THE CRIMINAL PENALTIES APPLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a ~~Class G felony.~~Class F felony."

SECTION 2. G.S. 14-72(a) reads as rewritten:

"(a) ~~Larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars ($1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars ($1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.~~

Larceny of goods or property and the receipt or possession of stolen goods are criminal offenses punishable as provided by this section. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen. Except as provided by

subsections (b) and (c) of this section, a violation of this subsection is punishable as follows:

(1) The offense is a Class 1 misdemeanor if the value of the goods or property is one thousand dollars ($1,000) or less.

(2) The offense is a Class H felony if the value of the goods or property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000).

(3) The offense is a Class G felony if the value of the goods or property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000).

(4) The offense is a Class F felony if the value of the goods or property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000).

(5) The offense is a Class E felony if the value of the goods or property exceeds one hundred thousand dollars ($100,000)."

SECTION 3. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employees.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. ~~If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.~~A violation of this section shall be punishable as follows:

(1) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75 exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 4. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be guilty of a ~~felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.~~felony punishable as follows:

(1) If the value of the property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 5. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be guilty of a ~~felony. If the value of the property is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony.~~ felony punishable as follows:

(1) If the value of the property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 6. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.**

(a) If an officer, agent, or employee of an entity listed ~~below,~~ in subsection (c) of this section or a person having or holding money or property in trust for one of the ~~listed entities,~~ entities listed in subsection (c) of this section, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be guilty of a ~~felony. If the value of the money or property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money or property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.~~ felony punishable as follows:

(1) If the value of the money or property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money or property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money or property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money or property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money or property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

(b) If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be guilty of a ~~felony. If the value of the money, funds, securities, or other property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, funds, securities, or other property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.~~ felony punishable as follows:

(1) If the value of the money, funds, securities, or other property is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, funds, securities, or other property exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, funds, securities, or other property exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, funds, securities, or other property exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, funds, securities, or other property exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

(c) The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

SECTION 7. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when

called on, he shall be guilty of a ~~felony. If the violation of this section involves money with a value of one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the violation of this section involves money with a value of less than one hundred thousand dollars ($100,000) or less, a violation of this section is a Class H felony.~~ felony punishable as follows:

(1) If the violation of this section involves money with a value of one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the violation of this section involves money with a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the violation of this section involves money with a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the violation of this section involves money with a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the violation of this section involves money with a value that exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 8. G.S. 14-97 reads as rewritten:

"§ 14-97. Appropriation of partnership funds by partner to personal use.

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~felony. Appropriation of partnership funds with a value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with the value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony.~~ felony punishable as follows:

(1) Appropriation of partnership funds with a value of one thousand dollars ($1,000) or less is a Class I felony.

(2) Appropriation of partnership funds with a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000) is a Class H felony.

(3) Appropriation of partnership funds with a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000) is a Class G felony.

(4) Appropriation of partnership funds with a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000) is a Class F felony.

(5) Appropriation of partnership funds with a value that exceeds one hundred thousand dollars ($100,000) is a Class C felony."

SECTION 9. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be guilty of a ~~felony. If the property, money, or effects has a value of one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the property, money, or effects has a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.~~ felony punishable as follows:

(1) If the property, money, or effects has a value of one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the property, money, or effects has a value that exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the property, money, or effects has a value that exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the property, money, or effects has a value that exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the property, money, or effects has a value that exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 10. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of ~~embezzlement, and shall be punished as a felon. If the value of the taxes is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the taxes is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony.~~embezzlement. A violation of this section shall be punishable as follows:

(1) If the value of the taxes is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the taxes exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the taxes exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the taxes exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the taxes exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 11. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. ~~If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony.~~A violation of this section is a felony punishable as follows:

(1) If the value of the money, goods, property, services, chose in action, or other thing of value is one thousand dollars ($1,000) or less, the person is guilty of a Class I felony.

(2) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), the person is guilty of a Class H felony.

(3) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds ten thousand dollars ($10,000) but does not exceed fifty thousand dollars ($50,000), the person is guilty of a Class G felony.

(4) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

(5) If the value of the money, goods, property, services, chose in action, or other thing of value exceeds one hundred thousand dollars ($100,000), the person is guilty of a Class C felony."

SECTION 12. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

SENATE BILL 1491: Prohibit Blunt Wraps

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 9, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S1491-CSRD		Committee Counsel

SUMMARY: ***Senate Bill 1491 would insert 'blunt wraps' into the definition of drug paraphernalia contained in G.S. 90-113.21. The Proposed Committee Substitute for SB 1491 amends the bill to insert the 'blunt wrap' definition language.***

[As introduced, this bill was identical to H1206, as introduced by Reps. Johnson, Barnhart, which is currently in House Judiciary II .]

CURRENT LAW: G.S. 90-113.21(a) provides the following definition of "drug paraphernalia":

- "...all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act...".

G.S. 90-113.21(a) sets forth a list of items to be included in the definition of "drug paraphernalia". Subdivision (12) of that subsection reads as follows: "Objects for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body...", then presents a list of specific items falling within this grouping of paraphernalia.

G.S. 90-113.22 "Possession of drug paraphernalia" makes it unlawful for a person to "...knowingly use, or to possess with intent to use, drug paraphernalia...". Violation of this provision is punishable as a Class 1 misdemeanor.

BILL ANALYSIS: Senate Bill 1491 would add 'blunt wraps' to the list of paraphernalia items included within G.S. 90-113.21(a)(12). Blunt wraps would include:

- A product that contains less than 50% tobacco or has a homogenized tobacco leaf wrapper that contains more than 16% moisture and is designed for use as a wrap for another substance that is smoked; and
- A product that is marketed and sold as a blunt wrap.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

S1491e1-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1491*
PROPOSED COMMITTEE SUBSTITUTE S1491-CSRD-17 [v.1]

5/7/2007 11:35:56 AM

Short Title: Prohibit Blunt Wraps. (Public)

Sponsors:

Referred to:

March 27, 2007

A BILL TO BE ENTITLED

AN ACT TO INCLUDE BLUNT WRAPS IN THE DEFINITION OF DRUG PARAPHERNALIA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.21(a)(12) is amended by adding a new subsubdivision to read:

"n. Blunt wraps, to include (1) a product that contains less than fifty percent (50%) tobacco or has a homogenized tobacco leaf wrapper that contains more than sixteen percent (16%) moisture and is designed for use as a wrap for another substance that is smoked, or (2) a product that is marketed and sold as a blunt wrap.".

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 132

Short Title:	Protect Children From Sexual Predators Act.	(Public)
Sponsors:	Senators Dalton, Snow, Boseman; Apodaca, Brunstetter, Cowell, Dorsett, Goodall, Goss, Hagan, Jones, Queen, Stevens, Tillman, and Weinstein.	
Referred to:	Judiciary II (Criminal).	

February 14, 2007

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO PROVIDE THAT IT SHALL BE ILLEGAL FOR THE OWNER OR OPERATOR OF A SOCIAL NETWORKING WEB SITE TO ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR MAINTAIN A PROFILE WEB PAGE ON A SOCIAL NETWORKING WEB SITE WITHOUT THE PERMISSION OF THE MINOR'S PARENT OR GUARDIAN AND WITHOUT PROVIDING SUCH PARENT OR GUARDIAN ACCESS TO SUCH PROFILE WEB PAGE AND TO PROVIDE FOR PENALTIES; TO PROVIDE THAT A FILM PROCESSOR, PHOTO FINISHER, OR COMPUTER TECHNICIAN WHO, IN THE COURSE OF WORK, ENCOUNTERS AN IMAGE OF A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE CUSTOMER REQUESTING THE WORK TO THE APPROPRIATE AUTHORITIES; TO INCREASE THE PENALTY FOR CERTAIN OFFENSES OF SOLICITATION OF CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; TO MAKE IT A FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION; TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO CONTROLLED SUBSTANCES AND TO AMEND THE PROCEDURE FOR CONVENING AN INVESTIGATIVE GRAND JURY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or

performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a ~~minor.~~minor, and G.S. 14-190.25, film, digital image, video processor or photo finisher or computer technician to report digital image, video or film or computer images containing pictures of a minor engaging in sexual activity.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
   a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
   b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
   c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:
   a. Masturbation, whether done alone or with another human or an animal.
   b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
   c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
   d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
   e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.
   f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or

vagina, except when done as part of a recognized medical procedure.

g. The lascivious exhibition of the genitals or pubic area of any person.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state."

SECTION 2. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 3. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class D felony."

SECTION 4. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class E felony."

SECTION 5. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-190.25. Film, digital image, video processor or photo finisher or computer technician to report digital image, video or film or computer images containing pictures of a minor engaging in sexual activity.**

(a) Any retail or wholesale film, digital image or video processor or photo finisher who is requested to develop film, digital image or video and any computer technician working with a computer who views an image of a minor or a person who appears to be a minor who is engaging in sexual activity shall report the name and address of the individual requesting the development of the film, or the owner or person in possession of the computer to the Cyber Tip Line at the National Center for Missing and Exploited Children and to the appropriate law enforcement official in the county or municipality in which the image or film was submitted. Any person complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report.

(b) Any person who knowingly fails to report as required by this section is guilty of an infraction punishable by a fine of two hundred fifty dollars ($250.00)."

SECTION 6. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is ~~a Class H felony.~~punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant or the person for whom the defendant was arranging the meeting in violation of this section actually appears at the meeting location, then the violation is a Class E felony."

SECTION 7. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) For purposes of this section, the term "official inquiry" means the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law.

(b) 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.

(c) In response to an official inquiry by a sworn agent of the State Bureau of Investigation, any person who shall willfully do any of the following is guilty of a Class H felony:

(1) Falsify or conceal by any trick, scheme, or device a material fact.

(2) Make any materially false, fictitious, or fraudulent statement or representation.

(3) Use any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry."

SECTION 8. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Requiring parental permission for minors to access social networking Web sites.**

(a) Definitions. – The following definitions apply in this section:

(1) Internet. – The global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(2) Person. – A sole proprietor, partnership, corporation, limited liability company, trust, joint venture, or other legally cognizable entity.

(3) Protected computer. – Any computer that, at the time of an alleged violation of any provision of this section involving that computer, was located within the geographic boundaries of the State of North Carolina.

(4) Social networking Web site. – A Web site on the Internet that contains profile web pages of the members of the Web site containing the name

or nickname of the member, photographs placed on the profile web page by the member, and other personal information about the member; contains links to other profile web pages on the social networking Web site of friends or associates of the member that can be accessed by other members or visitors to the Web site; and provides members of or visitors to the social networking Web site the ability to leave messages or comments on the profile web page that are visible to all or some visitors to the profile web page and may also include a form of electronic mail for members of the social networking Web site.

(b) Offense. – It is unlawful for the owner or operator of a social networking Web site to allow a minor using a protected computer to become a member or to create or maintain a profile web page on a social networking Web site without the permission of the minor's parent or guardian and without providing the parent or guardian access to the profile web page at all times. The identity of the parent or guardian shall be verified by comparing the personal information provided by the parent or guardian against information found in databases containing information aggregated about individuals.

(c) Penalties. – Any person violating this section shall be punished as follows:

(1) On the first offense, a person is guilty of a Class 3 misdemeanor.

(2) On the second or subsequent offense, a person is guilty of a Class 1 misdemeanor."

SECTION 9.(a) Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Investigative grand jury.**

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission of or conspiracy to commit any of the following:

(1) The misdemeanor or felony offense of obstruction of justice (Common law offense).

(2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).

(3) A violation of G.S. 14-90 (Embezzlement of property received by virtue of office or employment), G.S. 14-100 (Obtaining property by false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of notes, checks, and other securities; counterfeiting of instruments).

(4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the dissemination of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).

(5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).

(6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening), G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to

discharge duties), G.S. 14-234 (Public officers or employees benefiting from public contracts), or G.S. 14-234.1 (Misuse of confidential information).

(7) A violation of G.S. 14-254 (Malfeasance of corporation officers and agents).

(8) A violation of Article 37 of Chapter 14 of the General Statutes (Relating to lotteries, gaming, bingo, and raffles).

(9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled substances and continuing criminal enterprises).

(10) A violation of Article 20, 22, or 22A of Chapter 163 of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulation of contributions and expenditures in political campaigns).

(b) Appointment of Permanent Three-Judge Panel to Determine Whether to Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years thereafter, the Chief Justice shall appoint a permanent panel of three superior court judges to determine whether to order an investigative grand jury convened under this section. The panel of judges shall be appointed to serve for a term of two years. The Chief Justice shall fill any vacancy that occurs on the panel before the two-year term ends.

(c) Procedure for Determining Whether to Convene Investigative Grand Jury. – A written petition for convening of an investigative grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the petition to the panel of three judges established under subsection (b) of this section to determine whether to order the grand jury convened. An investigative grand jury under this section may be convened if the three-judge panel determines all of the following:

(1) The petition alleges the commission of or a conspiracy to commit any of the offenses listed in subsection (a) of this section, any part of which violation or conspiracy occurred in the county where the proposed investigative grand jury sits or will sit, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury.

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury

to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed.

A grand jury authorized by this section may be convened from an existing grand jury or grand juries authorized by G.S. 15A-622(b) or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding G.S. 15A-622(b), grand jurors impaneled pursuant to this section shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(d) Investigative Grand Jury Proceedings and Operations. – If an investigative grand jury is convened pursuant to this section, notwithstanding G.S. 15A-623(d), a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, the prosecutor may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with the witness's counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding G.S. 15A-623(e), the record of the examination of witnesses shall be made available to the examining prosecutor, and the prosecutor may disclose contents of the record to other investigative or law enforcement officers, the witness or the witness's attorney to the extent that the disclosure is appropriate to the proper performance of the prosecutor's official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this section may be made upon written order of a superior court judge if the judge determines disclosure is essential:

(1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or

(2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to this section, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera

proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A of the General Statutes. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court."

SECTION 9.(b) G.S. 15A-622(h) is repealed.

SECTION 9.(c) G.S. 15A-623(h) is repealed.

SECTION 10. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 132
PROPOSED COMMITTEE SUBSTITUTE S132-CSRI-1 [v.10]

5/9/2007 4:53:54 PM

Short Title: Protect Children From Sexual Predators Act. (Public)

Sponsors:

Referred to:

February 14, 2007

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO PROVIDE THAT A PROCESSOR OF PHOTOGRAPHIC IMAGES OR A COMPUTER TECHNICIAN WHO, IN THE COURSE OF WORK, ENCOUNTERS AN IMAGE OF A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE NAME OF THE CUSTOMER REQUESTING THE WORK TO THE APPROPRIATE AUTHORITIES; TO PROVIDE THAT IT SHALL BE UNLAWFUL FOR THE OWNER OR OPERATOR OF A COMMERCIAL SOCIAL NETWORKING WEB SITE TO ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR MAINTAIN A PERSONAL WEB PAGE ON A COMMERCIAL SOCIAL NETWORKING WEB SITE WITHOUT THE PERMISSION OF THE MINOR'S PARENT OR GUARDIAN AND WITHOUT PROVIDING SUCH PARENT OR GUARDIAN ACCESS TO SUCH PERSONAL WEB PAGE, TO REQUIRE THE OWNER OR OPERATOR TO ADOPT AND IMPLEMENT PROCEDURES TO CONFIRM THE IDENTITY AND AGE OF A PARENT OR GUARDIAN GRANTING PERMISSION, AND TO PROVIDE FOR PENALTIES; TO MAKE IT A FELONY FOR A REGISTERED SEX OFFENDER TO ACCESS A COMMERCIAL SOCIAL NETWORKING WEB SITE; TO INCREASE THE PENALTY FOR CERTAIN OFFENSES OF SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; TO MAKE IT A FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION; AND TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO CONTROLLED SUBSTANCES, TO AMEND THE PROCEDURE FOR CONVENING AN INVESTIGATIVE GRAND JURY, AND

TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE OFFICE OF THE COURTS FOR CONVENING INVESTIGATIVE GRAND JURIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"**§ 14-190.13. Definitions for certain offenses concerning minors.**

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a minor.

(1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and

b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(2) Material. – Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.

(3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.

(4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) Sexual Activity. – Any of the following acts:

a. Masturbation, whether done alone or with another human or an animal.

b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.

c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.

d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.

e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.

f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

g. The lascivious exhibition of the genitals or pubic area of any person.

(6) Sexually Explicit Nudity. – The showing of:

a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state."

SECTION 2. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony.~~Class C felony."

SECTION 3. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony.~~Class D felony."

SECTION 4. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony.~~Class E felony."

SECTION 5. Article 13 of Chapter 66 is amended by adding a new section to read:

"**§ 66-67.4. Processors of photographic images or computer technicians to report photo, film, video, or computer images that contain pictures of a minor engaging in sexual activity.**

(a) As used in this section:

(1) "Computer technician" means any person who repairs, installs, or otherwise services any computer or computer network or system for compensation.

(2) "Processor of photographic images" means any person who, for compensation: (i) develops exposed photographic film into negatives, slides, or prints; (ii) makes prints from negatives, slides, digital images, or video; or (iii) develops, processes, transfers, edits, or enhances video or digital images.

(4) "Minor" has the same meaning as in G.S. 14-190.13.

(5) "Sexual activity" has the same meaning as in G.S. 14-190.13.

(b) Any processor of photographic images or any computer technician who, within the person's scope of employment, observes an image of a minor or a person who reasonably appears to be a minor engaging in sexual activity shall report the name and address of the person requesting the processing of the photographic images or the owner or person in possession of the computer or computer network or system to the Cyber

Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality in which the photographic image was submitted.

(c) An employee of a processor of photographic images or computer technician may satisfy the requirements of this section by reporting the required information to a person designated by the employer. The person designated by the employer shall then report as required by subsection (b) of this section.

(d) Any person, their employer, or a third-party complying with this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred as a result of the report. In any proceeding involving liability, good faith is presumed."

SECTION 6. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is ~~a Class H felony.~~punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant or the person for whom the defendant was arranging the meeting in violation of this section actually appears at the meeting location, then the violation is a Class E felony."

SECTION 7. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) For purposes of this section, the term "official inquiry" means the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law.

(b) 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.

(c) In response to an official inquiry by a sworn agent of the State Bureau of Investigation, any person who shall willfully do any of the following is guilty of a Class H felony:

(1) Falsify or conceal by any trick, scheme, or device a material fact.

(2) Make any materially false, fictitious, or fraudulent statement or representation.

(3) Use any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry."

SECTION 8.(a) Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"§ 75-40. Requiring parental permission for minors to access commercial social networking Web sites.

(a) Findings. – The General Assembly finds all of the following:

(1) Commercial social networking Web sites are growing dramatically and have become widely used online communications tools. A significant percentage of minor children use these social networking Web sites.

(2) Because children post personal information on these sites that may be accessed by other users, these social networking Web sites have become a matter of State and national concern. In particular, adult sexual predators use these sites to identify, contact, and exploit children.

(3) While parents and legal guardians are primarily responsible for protecting the physical and psychological well-being of their children, protection of children from exploitation by sexual predators is a compelling governmental interest.

(4) Filtering software that prevents children from accessing social networking and other Web sites is commercially available but does not provide complete or even adequate protection to children from online sexual predators. Only a portion of households with minor children and Internet connections use filtering software that limits or prohibits access to such sites. Even if filters are used, a child may circumvent a filter by simply going to another location where the filter does not operate.

(5) Most commercial social networking Web sites attempt to separate children from adults by asking users for either their age or date of birth. A user can easily circumvent this barrier by misrepresenting his or her age.

(6) Requiring commercial social networking Web sites to obtain the permission of a parent or legal guardian before his or her child can enter and use a social networking Web site provides parents important assistance in protecting their children from harm on the Internet.

(7) Verifying the identity of a parent or guardian who then grants a minor permission to enter and use a social networking Web site makes it more difficult for the minor to bypass a barrier between children and adults. Identity verification therefore furthers and facilitates supervision of children by their parents and guardians and furthers the State's interest in protecting children from online sexual predators. Moreover, identity verification of adults is commercially available.

(8) While commercial social networking Web sites offer a forum for political discourse, friendships, and cultural developments, preserving this arena of expression must be balanced against the compelling State interest in protecting children from sexual predators. Providing parents the power to permit or deny their children's participation enhances the protection of children without unduly restricting expression.

(b) Definitions. – The following definitions apply in this section:

(1) Internet. – The global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.

(2) Person. – An individual, sole proprietor, partnership, corporation, limited liability company, trust, joint venture, or other legally cognizable entity.

(3) Protected computer. – Any computer that, at the time of an alleged violation of any provision of this section involving that computer, was located within the geographic boundaries of the State of North Carolina.

(4) Commercial social networking Web site. –

a. A commercial social networking Web site is an Internet Web site that (i) is operated by a person who derives revenue membership fees, advertising, or other sources related to the operation of the Web site; (ii) facilitates the social introduction between two or more persons for the purposes of friendship, meeting other persons, or information exchanges; (iii) allows users to create Web pages or personal profiles that contain information such as the name or nickname of the user, photographs placed on the personal Web page by the user, other personal information about the user, and links to other personal Web pages on the commercial social networking Web site of friends or associates of the user that may be accessed by other users or visitors to the Web site; and (iv) provides users or visitors to the commercial social networking Web site mechanisms to communicate with other users, such as a message board, chat room, electronic mail, or instant messenger.

b. A commercial social networking Web site does not include an Internet Web site (i) that provides only one of the following discrete services: photo-sharing, electronic mail, instant messenger, or chat room or message board platform; or (ii) the primary purpose of which is the facilitation of commercial transactions involving goods or services between its members or visitors.

(5) Hosting provider. – A commercial provider of Web hosting services where the provider does not determine the content to be hosted on the

Web site, but such content is determined in the discretion of the customer of the hosting provider. Creation, implementation, or enforcement of acceptable use policies by a hosting provider shall not mean that a hosting provider determines the content to be hosted on the Web site for purposes of this definition.

(c) No owner or operator of a commercial social networking Web site shall allow a minor using a protected computer to create or maintain a personal Web page on a social networking Web site without first obtaining the permission of the minor's parent or guardian and without providing the parent or guardian access to the personal Web page at all times the commercial social networking Web site is operational.

(d) Any owner or operator of a social networking Web site shall adopt and implement procedures to confirm the identity and age of parents or guardians who are providing permission for their minor children and members at the time of registration by independently validating the accuracy of personal identification information submitted at the time of registration.

(e) Violation of any provision of this section shall constitute an unfair and deceptive trade practice under Chapter 75-1.1 of the General Statutes. For the purposes of this section, each day that an owner or operator of a commercial social networking Web site fails to adopt and implement the procedures required of this section shall constitute a separate and distinct violation.

(f) This section shall not apply to an Internet service or hosting provider by reason of such provider's transmitting, routing, or providing connections for information sent or received from a commercial social networking Web site, or by reason of hosting the commercial social networking Web site, at the direction of a user or customer; provided that the Internet service or hosting provide does not profit directly from the activities of the commercial social networking Web site or intentionally aid and abet a violation of this section."

SECTION 8.(b) Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-202.3. Ban use of commercial social networking Web sites by sex offenders.**

(a) Offense. – It is unlawful for a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access a commercial social networking Web site, as defined in G.S. 75-40, that permits minor children to become a member or to create or maintain a personal Web page on a commercial social networking Web site.

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

(c) Punishment. – A violation of this section is a Class G felony.

SECTION 9.(a) Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-632. Investigative grand jury.**

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission of or conspiracy to commit any of the following:

(1) The misdemeanor or felony offense of obstruction of justice (Common law offense).

(2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).

(3) A violation of G.S. 14-90 (Embezzlement of property received by virtue of office or employment), G.S. 14-100 (Obtaining property by false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of notes, checks, and other securities; counterfeiting of instruments).

(4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the dissemination of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).

(5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).

(6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening), G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to discharge duties), G.S. 14-234 (Public officers or employees benefiting from public contracts), or G.S. 14-234.1 (Misuse of confidential information).

(7) A violation of G.S. 14-254 (Malfeasance of corporation officers and agents).

(8) A violation of Article 37 of Chapter 14 of the General Statutes (Relating to lotteries, gaming, bingo, and raffles).

(9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled substances and continuing criminal enterprises).

(10) A violation of Article 20, 22, or 22A of Chapter 163 of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulation of contributions and expenditures in political campaigns).

(b) Appointment of Permanent Three-Judge Panel to Determine Whether to Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years thereafter, the Chief Justice shall appoint a permanent panel of three superior court judges to determine whether to order an investigative grand jury convened under this section. The panel of judges shall be appointed to serve for a term of two years. The Chief Justice shall fill any vacancy that occurs on the panel before the two-year term ends.

(c) Procedure for Determining Whether to Convene Investigative Grand Jury. – A written petition for convening of an investigative grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina

Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the petition to the panel of three judges established under subsection (b) of this section to determine whether to order the grand jury convened. An investigative grand jury under this section may be convened if the three-judge panel determines all of the following:

(1) The petition alleges the commission of or a conspiracy to commit any of the offenses listed in subsection (a) of this section, any part of which violation or conspiracy occurred in the county where the proposed investigative grand jury sits or will sit, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury.

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed.

A grand jury authorized by this section may be convened from an existing grand jury or grand juries authorized by G.S. 15A-622(b) or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding G.S. 15A-622(b), grand jurors impaneled pursuant to this section shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(d) Investigative Grand Jury Proceedings and Operations. – If an investigative grand jury is convened pursuant to this section, notwithstanding G.S. 15A-623(d), a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, the prosecutor may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with the witness's counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding G.S. 15A-623(e), the record of the examination of

witnesses shall be made available to the examining prosecutor, and the prosecutor may disclose contents of the record to other investigative or law enforcement officers, the witness or the witness's attorney to the extent that the disclosure is appropriate to the proper performance of the prosecutor's official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this section may be made upon written order of a superior court judge if the judge determines disclosure is essential:

(1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or

(2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to this section, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A of the General Statutes. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court."

SECTION 9.(b) G.S. 15A-622(h) is repealed.

SECTION 9.(c) G.S. 15A-623(h) is repealed.

SECTION 10. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of seventy-five thousand dollars ($75,000) for the 2007-2008 fiscal year for expenses associated with administration of investigative grand juries convened pursuant to G.S. 15A-632, as enacted by section 9.(a) of this act.

SECTION 11. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 12. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 132:
Protect Children From Sexual Predators Act

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 10, 2007
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S132-CSRI-1 [v.9]		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 132 would: (i) amend the definition of "sexual activity" as it relates to offenses concerning minors; (ii) require that a processor of photographic images or computer technician who, in the course of work, encounters an image of a minor engaging in sexual activity must report the name of the customer requesting the work to the appropriate authorities; (iii) make it unlawful for the owner or operator of a social networking Web site to allow a minor using a protected computer to create or maintain a personal Web page on a social networking Web site without the permission of the minor's parent or guardian and without providing such parent or guardian access to such personal Web page; (iv) make it a Class G felony for a registered sex offender to access a commercial social networking Web site where minors are members or maintain personal Web pages; (v) make it a Class H felony to lie to a sworn SBI agent conducting an official investigation; (vi) increase penalties for several offenses, including solicitation of a child by computer to commit an unlawful sex act, and 1st, 2nd, and 3rd degree sexual exploitation of a minor; (vii) authorize the convening of a grand jury to investigate allegations regarding the commission or conspiracy to commit a number of listed crimes; and (viii) appropriate $75,000 to the Administrative Office of the Courts (AOC) to cover the costs of administration associated with investigative grand juries convened as provided in herein.

BILL ANALYSIS:

- **The PCS would amend the definition of "sexual activity" as it relates to offenses concerning minors to include "[t]he lascivious exhibition of the genitals or public area of any person."** This language is included in federal law (18 USCS § 2256).

- **The PCS would require processors of photographic images or computer technicians who, in the course of work, encounter an image of a minor or a person who appears to be a minor engaging in sexual activity must report the name of the customer requesting the work to the Cyber Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality.** A person complying with this provision in good faith would be immune from civil or criminal liability that might be incurred as a result of such a report.

- **The PCS would create several new offenses:**

  - Make it unlawful for the owner or operator of a commercial social networking web site to allow a minor to create or maintain a personal Web page on the site without the permission of the minor's parent or guardian and without providing such parent or guardian access to the personal web page. The PCS would also require the owner or operator to adopt and implement procedures to confirm the identity and age of a parent or guardian granting permission A violation by an owner or operator would be punishable as an unfair and deceptive trade practice under Ch. 75 of the General Statutes, for which a civil penalty of up to $5,000 may be imposed for each violation. Under the PCS, each day that an owner or

operator of a commercial social networking Web site fails to adopt and implement the procedures required of this section constitutes a separate and distinct violation.

- Make it a Class G felony[1] for a registered sex offender to access a commercial social networking web site that permits minors to become members or create personal Web pages.
- Make it a Class H felony to lie to a sworn SBI agent in response to an official inquiry.

  The PCS defines "*official inquiry*" as "the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law."

➢ **The PCS would increase penalties for several offenses as follows:**

Offense	Current Penalty	Proposed Penalty
1st degree sexual exploitation of a minor (GS 14-190.16)	Class D felony	[2]Class C felony
2nd degree sexual exploitation of a minor (GS 14-190.17)	Class F felony	[3]Class D felony
3rd degree sexual exploitation of a minor (GS 14-190.17A)	Class I felony	[4]Class E felony
Solicitation of child by computer to commit an unlawful sex act (GS 14-202.3)	Class H felony	Class H felony, except if the defendant or person the defendant has made arrangements for actually appears at the meeting in which case it is a Class E felony

➢ **The PCS would create a new statute that authorizes the convening of a grand jury to investigate allegations regarding the commission or conspiracy to commit a number of listed crimes.** It would require that the Chief Justice appoint a permanent panel of three superior court judges every two years (beginning Dec. 1, 2007) to determine whether to order an investigative grand jury.

The PCS would repeal certain statutes that authorize convening of a grand jury to investigate allegations of crimes involving controlled substances. These provisions are incorporated into the new statute, except for requirements under the existing law concerning approval of grand jury petitions by three members of the NC Conference of District Attorneys, and that the Attorney General and the Clerk of the NC Supreme Court concur in the petition.

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[1] The presumptive range of punishment for a Class G felony when there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment.

[2] The presumptive range of punishment for a Class C felony when there are no prior convictions is 58 to 73 months of active punishment.

[3] The presumptive range of punishment for a Class D felony when there are no prior convictions is 51 to 64 months of active punishment.

[4] The presumptive range of punishment for a Class E felony when there are no prior convictions is 20 to 25 months of intermediate or active punishment.

- **The PCS would appropriate $75,000 to the AOC to cover the costs of administration associated with investigative grand juries convened as provided in this PCS.**

EFFECTIVE DATE: The PCS would become effective December 1, 2007, and apply to offenses committed on or after that date.

S0132e1-SMRI-CSRI-1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 132

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

S132-ARI-10 [v.3]

Date May 15 ,2007

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Senator Apodaca

moves to amend the bill on page 1, line 21, through page 2, line 2, by rewriting those lines to read:

"COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; AND TO MAKE IT A FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION.";

and on page 7, line 40, through page 10, line 32, by deleting those lines and renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 83 _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S132-CSLI-1[9.]

Rep.) Sen.) James

moves to amend the bill on page 7, line 39-40

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following:

"SECTION 8.(c) Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

'G.S. 14-203.6 Ban on name changes by sex offenders.

It is unlawful for a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to obtain a change of name under Chapter 101 of the General Statutes.'

SECTION 8.(d) G.S. 101-6 is amended by adding a new subsection to read:

'(c) A sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes is prohibited from obtaining a name change under this Chapter.'"

SIGNED _____

and on P. 7, line 30 by deleting "§ 14-202.3" and replacing it with § 14-202.5.",

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT) Edd James

THE PROGRESS
FREEDOM FOUNDATION

May 14, 2007

Adam D. Thierer
Senior Fellow and Director
Center for Digital Media Freedom
The Progress & Freedom Foundation
1444 Eye St., NW
Washington, DC 20005

The Honorable Fletcher Hartsell
518 Legislative Office Building
Raleigh, NC 27603-5925

Dear Chairman Hartsell:

I am writing to express my grave concerns about a measure that the North Carolina Senate is currently considering, S. 132, which would require parental consent before a minor is allowed to visit a "social networking" website. While well-intentioned, this measure will not make children safer while they are online. In fact, it will likely make them far less safe.

I am a Senior Fellow at The Progress & Freedom Foundation (PFF) and Director of PFF's Center for Digital Media Freedom. PFF is a 501(c)(3) non-profit organization that was founded in 1993 and is a recognized leader in studying the digital revolution and educating the public and policymakers about issues associated with technological change. I have studied this issue extensively and recently released a major report entitled "Social Networking and Age Verification: Many Hard Questions; No Easy Solutions."[1] I have submitted a copy of the study for the record. I am also the author of the forthcoming PFF *Special Report*, "Parental Controls and Online Child Protection: A Survey of Tools and Methods." I would be happy to provide an advance copy of that report to the Committee upon request.

The central finding of my research on this front is that perfect age verification is a quixotic objective. Each of the seven different age verification methods or mechanisms I have reviewed has serious deficiencies and would open the door to predators to operate online under false pretenses. It is vitally important that we do not rush to adopt a regulatory solution that instills a false sense of security in either parents or youngsters about social networking sites. Parents and minors who are lead to believe that age verification guarantees "safe spaces" online might drop their guard. This would be the worst of all possible outcomes.

The better response to concerns about online child safety is what I call the "3-E Solution," which refers to "education, empowerment and enforcement." Empowerment refers to the tools and methods available to parents to better monitor and control their children's online behavior and activities. Education refers to the need to industry, government and parents to do more to teach our children about online risks and proper online etiquette. And enforcement refers to the need for legislators and law enforcement officials to do more to weed out and adequately prosecute the real bad guys looking to prey on our children.

On this last point, it should be clear that government *does* have an important role to play in this area. The role of law enforcement should be to focus on prosecuting serious threats that are discovered online. Appropriate

[1] Adam Thierer, "Social Networking and Age Verification: Many Hard Questions; No Easy Solutions," Progress & Freedom Foundation, *Progress on Point* no. 14.4, March 2007, http://www.pff.org/issues-pubs/pops/pop14.5ageverification.pdf

sentencing is the most important part of that solution. Shockingly, a 2003 Department of Justice study reported that the average sentence for child molesters was approximately seven years; on average, they were released after serving just three of those seven years.[2] Such sentences need to be greatly extended and enforced to ensure that convicted child abusers aren't out on the streets and sitting behind keyboards looking to prey upon children again. But it is also essential that law enforcement officials receive the resources and training necessary to adequately monitor online networks for predators and to bring them to justice when they are found. Establishing and adequately funding computer forensic labs and experts is extremely important in that regard.

By contrast, regulatory solutions such as the one currently being considered in North Carolina, could have disastrous unintended consequences. In particular, it is essential that we do nothing that might force mainstream, domestic social networking sites offshore or, even worse, that could drive the young users we are trying to protect to offshore sites. Whatever the concerns are about current domestic sites, parents and policymakers should understand that those sites are generally far more accountable and visible than offshore sites over which we have virtually no influence but that have the same reach as domestic sites.

Please let me know if I can be of further assistance to the Committee or provide additional information on this matter.

Sincerely,

Adam D. Thierer

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[2] "5 Percent of Sex Offenders Rearrested for Another Sex Crime within 3 Years of Prison Release," U.S. Department of Justice, Office of Justice Programs, November 16, 2003, www.ojp.usdoj.gov/bjs/pub/press/rsorp94pr.htm

SENTINEL

May 14, 2007

The Honorable Fletcher Hartsell
518 Legislative Office Building
Raleigh, NC 27603-5925

Sent by email: fletcherh@ncleg.net

Dear Chairman Hartsell:

Protecting children online is a major policy priority and a key factor for any enterprise conducting business online. The North Carolina Senate has before it, S 132, a bill to require parental consent for a minor to use many websites. After many years as a police officer, investigator and software security expert, I have looked closely at this legislation and I write respectfully to oppose its enactment.

Section 8 of S 132 requires a parent to provide consent before a minor uses a so-called "social networking website." While very well intentioned, the legislation has the unintended consequence of creating a new means for predators to find and exploit children. As found by a federal court of law, *(ACLU v. Gonzales*, Civ. No. 98-5591 (E.D. Pa. March 22, 2007), many leading technology thinkers, and security firms such as Sentinel, we know that these systems do not work. It is simply too easy for any person to falsify their age, or to pose as a parent when in fact they are not.

Fundamentally, the issue is not confirming that the age of an individual is over 18. The problem lies in authenticating that the individual inputting the data is the same individual who is the person who is over 18. Therein lays the problem of using age verification in the context of social networking sites: It does not address the problems of protecting younger users from sexual predators. A younger user can easily lie and provide information to sign up as an adult to avoid the parental consent requirement. Since there is no way to confirm that the minor is connected to the adult providing consent, or that the minor even exists at all, a predator can lie and register him or herself as a child.

Not only will this concept do nothing to protect children, it will give the predator the ability to create and assert the false online identities of minors. Once predators discover this loophole (and they quickly will), they'll create fake online profiles, assume the identity of the minor, and chat as a minor, with as many minors as they desire.

Please note that we are a company that sells identity and age verification services, so by taking this position I am actually arguing myself out of revenue and profits. Why? Because I feel there is only one honest and ethical position on this issue.

While I believe enacting this bill may do more harm than good, I encourage you to address the problem of predators online through other means. One such measure is pending before the Senate now, S 869, a bill requiring convicted sex offenders to provide their email addresses when they register with their parole officers and local officials. This will empower companies to remove sex offenders from their online services, and if one of these offenders lies about his email address or fails to report that he is online, then he will go back to jail. We feel that is a measure which will actually improve online safety and security, and we are eager to see it enacted.

I am happy to work with the Committee as requested to provide additional information on this matter.

Sincerely,

John J. Cardillo
President and CEO
Sentinel

About Sentinel:

Sentinel is the industry leader in online identity and background verification. We make it easier, faster and more convenient for individuals to rest assured that those they're communicating with, are who they claim. Sentinel searches tens of billions of records spanning over 30 years, and delivers the results instantly through our secure interface with unparalleled results and accuracy.

May 9, 2007

The Honorable Fletcher L. Hartsell, Jr.
North Carolina Senate
Legislative Building
16 West Jones Street
Raleigh, NC 27601

RE: AeA's Comments on SB 132 Protect Children From Sexual Predators

Dear Chairman Hartsell:

On behalf of the high-tech industry, AeA (American Electronics Association) would like to express our concerns on SB 132 Protect Children From Sexual Predators Act. Despite, this bill's good intentions to protect North Carolina children, we are concerned that this bill would actually increase the very risks it is designed to combat.

Inherent in the legislative language of SB 132 is the idea of the "social networking website" being able to verify the ages of all the customers who use the site. Under threat of criminal penalty, websites would be required to identify with certainty that a parent has given minors consent to use a social networking website. Also, the website would need to authenticate that the party providing parental consent is, in fact, the parent. AeA believes there are several problems with this approach.

To date there is no proven mechanism for age verification for users under the age of 18. A report conducted on December 20, 2006, by the Virginia Attorney General Youth Internet Safety Taskforce[1] came to this conclusion. Proposed methods to increase the accuracy of age and identity verification raise significant privacy and security concerns that have yet to be resolved, and make them inappropriate for child safety applications. Even under the most ambitious proposed concepts 100% certainty, sufficient to protect against criminal liability, is not be possible.

Theoretically, there are basically two approaches to age verification: 1) a legitimate party, e.g., a driver's license bureau, makes identity claims on behalf of a particular person which an online service can use to verify age or 2) a person provides the website with a real name and address, which are then checked against various databases (e.g., credit bureaus, social security database, etc.). Both scenarios raise significant privacy and security issues, including legal issues, that have not yet been addressed, and it is not clear that either approach would yield a workable solution. Moreover, it is not yet clear that implementing either approach will increase child safety.

We believe that there is no single solution for best protecting children online. Rather online safety requires a multi-faceted approach involving ever evolving technology,

[1] See, e.g., http://www.vaag.com/InternetTaskForce/ReportYISTFfinal.pdf

public education and partnerships with law enforcement and other groups to keep the Internet safe for children. There are already technical solutions in place that help parents and children make sure their experiences on the Internet are safe and fun. For example, parental controls allow parents to manage exactly what their children do on their computers, from what games they can play to which programs they can use, and which Web sites they can visit. Additionally, parents can set age-appropriate limits for each child in the family.

In addition to many tools and processes that companies and non-governmental organizations already have in place to help address this issue, there are other steps that should be taken to increase child online safety. In general, we recommend a) providing new and more effective tools for law enforcement; b) increasing penalties for child predators; and c) creating new innovative ways to increase the awareness of parents and children to the dangers that currently exist online.

AeA is the nation's largest high-tech trade association and represents over 1.8 million high-tech workers in more than 2,500 IT sector companies which span the high-technology spectrum, from software, semiconductors, medical devices and computers to Internet technology, advanced electronics and telecommunications systems and services. Complete information on AeA and its mission is available on our website at www.aeanet.org.

We thank you again for your work on this issue and look forward to continuing to work with you on this important legislation. Should you have any questions, please do not hesitate to reach me in our Washington, DC office, at 202-682-4439 or alan_vazquez@aeanet.org.

Sincerely,

Alan D. Vazquez, Esq.
Manager & Counsel of Public Policy

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1202

Short Title:	Litter Violation Reported by Citizen.	(Public)
Sponsors:	Senator Jacumin.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CITATION MAY BE ISSUED FOR A LITTERING OFFENSE THAT INVOLVES THE OPERATION OF A MOTOR VEHICLE BASED ON THE AFFIDAVIT OF A WITNESS.

The General Assembly of North Carolina enacts:

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

"**§ 14-399.3. Civil penalty for litter may be assessed based on witness's affidavit.**

(a) Reporting of Litter Violation. – Any North Carolina resident who witnesses a littering violation under G.S.14-399 that involves the operation of a motor vehicle may file a sworn affidavit reporting the incident with a magistrate in the county in which the violation occurred. The affidavit may be mailed by first-class mail to the magistrate in the appropriate county. The affidavit shall include the license plate of the vehicle involved in the violation, a description of the vehicle, and the date, location, and approximate time of the violation.

(b) Citation Issued. – The magistrate shall issue a citation to the owner of the vehicle based on the affidavit filed by the witness. The citation shall clearly state the violation, the penalty for the violation, the procedure for paying the civil penalty assessed, and the manner in which the violation may be challenged. The citation shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration.

(c) Responsibility of Vehicle Owner and Procedure for Challenging the Violation. – Notwithstanding G.S. 14-399.3(b) the owner of the vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes to a magistrate of the county that issued the citation the following:

(1) The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

(2) An affidavit stating that the vehicle involved was at the time stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(d) Civil Penalties. – Notwithstanding G.S. 14-399, a violation enforced under this section shall be a noncriminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed. If the vehicle owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional civil penalty for failure to respond not to exceed twenty-five dollars ($25.00). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The actual costs of collection, not to exceed twenty percent (20%) of the amount collected shall be remitted to the clerk of court to be credited to the office of the magistrate.

(e) Administrative Office of the Courts to Establish Collection and Appeal Procedures. – The Administrative Office of the Courts shall establish procedures for the collection of the penalties assessed under this section and may enforce the penalties by civil action in the nature of debt."

SECTION 2. G.S. 7A-292 is amended by adding the following new subdivisions to read:

"(15) To accept the filing of affidavits reporting litter violations and to issue citations pursuant to G.S. 14-399.3.

(16) To hear and enter judgment in all litter cases appealed under G.S. 14-399.3."

SECTION 3. By December 1, 2007, the Administrative Office of the Courts shall develop an affidavit form that may be used to report a violation as provided by G.S. 14-399.3. The Administrative Office of the Courts shall provide the forms to each magistrate in the State and shall also make the form accessible to the public through the Internet. Each magistrate shall make the printed forms available to any member of the general public who requests one.

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1202
PROPOSED COMMITTEE SUBSTITUTE S1202-CSRC-33 [v.4]

5/9/2007 5:21:14 PM

Short Title: Litter Violation Reported by Citizen. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CITATION MAY BE ISSUED FOR A LITTERING OFFENSE THAT INVOLVES THE OPERATION OF A MOTOR VEHICLE OR A VESSEL BASED ON THE AFFIDAVIT OF A WITNESS.

The General Assembly of North Carolina enacts:

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

"**§ 14-399.3. Civil penalty for litter may be assessed based on witness's affidavit.**

(a) Reporting of Litter Violation. – Any North Carolina resident who witnesses a littering violation under G.S.14-399 that involves the operation of a motor vehicle or a vessel as defined in G.S. 75A-2(5) may file a sworn affidavit reporting the incident with a magistrate in the county in which the violation occurred. The affidavit may be mailed by first-class mail to the magistrate in the appropriate county. The affidavit shall include the license plate number of a motor vehicle involved in a violation reported under this section, or the identification number of a vessel involved in a violation reported under this section, a description of the motor vehicle or vessel, and the date, location, and approximate time of the violation. The affidavit shall also include the following: "ANY PERSON WHO KNOWINGLY AND WILLFULLY MAKES A FALSE STATEMENT IN AN AFFIDAVIT REPORTING A LITTER VIOLATION UNDER G.S. 14-399.3 SHALL BE GUILTY OF A CLASS 2 MISDEMEANOR AND ASSESSED A FINE OF UP TO $1,000.".

(b) Citation Issued. – The magistrate shall issue a citation to the owner of the motor vehicle or vessel based on the affidavit filed by the witness. The citation shall clearly state the violation, the penalty for the violation, the procedure for paying the civil penalty assessed, and the manner in which the violation may be challenged. The citation shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration or vessel identification number.

(c) Responsibility of Motor Vehicle or Vessel Owner and Procedure for Challenging the Violation. – Notwithstanding G.S. 14-399.3(b) the owner of the motor vehicle or vessel shall be responsible for a violation unless the owner can furnish evidence that the motor vehicle or vessel was, at the time of the violation, in the care, custody, or control of another person or that there was no violation. The owner of the motor vehicle or vessel shall not be responsible for the violation if the owner, within 21 days after notification of the violation, furnishes to a magistrate of the county that issued the citation the following:

(1) The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the motor vehicle or vessel at the time of the incident; or

(2) An affidavit stating that the motor vehicle or vessel involved was at the time stolen or in the care, custody, or control of some person who did not have permission of the owner to use the motor vehicle or vessel; or.

(3) An affidavit that establishes by a preponderance of the evidence that there was no violation.

(d) Magistrate's determination. If a person issued a citation under this section does not pay the penalty assessed or challenge the citation as provided by subsection (c) of this section, the magistrate shall enter a default judgment against the person for the appropriate penalty as provided by subsection (e) of this section. If a person challenges a citation under this section, and the magistrate, based on the affidavits determines that the person responding has not satisfied the provisions of subsection (c) of this section, the magistrate shall enter a judgment against the person for the appropriate penalty under subsection (e) of this section. If the magistrate, based on the affidavits, determines that a person who challenges a citation under this section has satisfied the provisions of subsection (c) of this section the magistrate shall dismiss the citation.

(e) Civil Penalties. – Notwithstanding G.S. 14-399, a violation enforced under this section shall be a noncriminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed. If the owner of the motor vehicle or vessel fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional civil penalty for failure to respond not to exceed twenty-five dollars ($25.00). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The actual costs of collection, not to exceed twenty percent (20%) of the amount collected shall be remitted to the clerk of court to be credited to the office of the magistrate.

(f) Enforcement of penalties. – A magistrate may enforce a penalty assessed under this section by civil action in the nature of debt.

(g) False statement in affidavit. – Any person who knowingly and willfully makes a false statement in an affidavit submitted under this section is guilty of a Class 2 misdemeanor punishable by a fine of up to one thousand dollars ($1,000). No other punishment shall apply."

SECTION 2. G.S. 7A-292 is amended by adding the following new subdivisions to read:

"(15) To accept the filing of affidavits reporting litter violations and to issue citations pursuant to G.S. 14-399.3.

(16) To hear and enter judgment in all litter cases under G.S. 14-399.3."

SECTION 3. By December 1, 2007, the Administrative Office of the Courts shall develop an affidavit form that may be used to report a violation as provided by G.S. 14-399.3. The Administrative Office of the Courts shall provide the forms to each magistrate in the State and shall also make the form accessible to the public through the Internet. Each magistrate shall make the printed forms available to any member of the general public who requests one.

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1202:
Litter Violation Reported by Citizen

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 9, 2007
Introduced by:	Sen. Jacumin	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S1202-CSRC-33		

SUMMARY: ***Senate Bill 1202 would create a civil process by which a citizen could file a sworn affidavit with a magistrate alleging a litter violation involving a motor vehicle or a vessel. The magistrate could issue a citation and a fine for that violation. The person accused of littering may file an affidavit challenging the violation. If the magistrate finds that a violation occurs, the magistrate shall issue a fine of $100 and an additional $25 for failure to pay the fine in a timely manner.***

CURRENT LAW: G.S. 14-399 prohibits littering. The types of acts that are prohibited and the applicable punishments are outlined below:

Littering that is intentional or reckless - G.S. 14-399(a)

Amount of Litter/type/ purpose of littering	Punishment for 1st offense	Other consequences related to littering from a vehicle or watercraft
Less than 15 lbs, not a commercial purpose	Class 3 misdemeanor, fine between $250-$1000, possible community service from 8-24 hours	1 drivers license point. Presumption operator committed offense.
15 to 500 lbs., not a commercial purpose	Class 3 misdemeanor, fine between $500-$2,000, required community service from 24-100 hours	1 drivers license point Presumption operator committed offense.
Over 500 lbs, any amount for a commercial purpose, or any hazardous waste	Class I felony	1 drivers license point. Presumption operator committed offense. Vehicle or vessel considered contraband, subject to seizure and forfeiture.

Littering without intentionality or recklessness - G.S. 14-399(a1)

Amount of Litter	Punishment for 1st offense	Other consequences related to littering from a vehicle or watercraft
Less than 15 lbs	Infraction, fine of not more than $100, possible community service from 4-12 hours	Presumption operator committed offense.
15 to 500 lbs.	Infraction, fine nor more than $200, possible community service from 8-24 hours	Presumption operator committed offense.
Over 500 lbs	Infraction, fine nor more than $300, possible community service from 16-50 hours	Presumption operator committed offense.

BILL ANALYSIS: Senate Bill 1202 would create a civil process by which a citizen could allege a litter violation and the violator would be assessed a civil fine of $100.

G.S. 14-299.3(a) would allow a citizen who witnesses a littering violation that involves a motor vehicle or vessel could file a sworn affidavit reporting to violation with a magistrate in the county where the violation occurred. The affidavit would include the license plate number of the motor vehicle or the identification number of the vessel. It would also include a description of the vehicle or vessel, the date, location, and approximate time of the violation. It would also include language describing the penalty for filing a false affidavit.

Upon receipt of the affidavit, the magistrate would issue a citation to the owner of the vehicle or vessel. The citation would state the violation, the penalty for the violation, and the manner by which the violation could be challenged. The citation could be sent by first class service to the owner.

The owner of the vehicle or vessel would be responsible for the violation unless he or she can furnish within 21 days after notification of the violation of any of the following:

- The name and address of the person who had care, custody and control of the vehicle or vessel at the time of the incident.
- An affidavit stating the vehicle was stolen or under the control of another person without the permission of the owner at the time of the violation.
- An affidavit that establishes by a preponderance of the evidence that there was no violation.

The magistrate will enter a default judgment against the person issued a citation if that person does not challenge the citation or does not pay the penalty assessed. The magistrate shall also enter a judgment against the person if the magistrate finds the person satisfied the grounds for challenging the citation. The penalty for a violation would b e$100, plus an additional $25 for failure to pay the fine in a timely manner.

A person who willfully and knowingly swears a false affidavit under this section would be guilty of a Class 2 misdemeanor and fined $1000.

The Administrative Office of the Courts would be required to develop an affidavit for this purpose and make it available to the public.

EFFECTIVE DATE: The act would be become effective December 1, 2007 and apply to offenses occurring on or after that date.

S1202e1-SMRC-CSRC-33

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1407

Short Title: Resale of Tickets via Internet. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II (Criminal).

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS FROM UNLAWFUL SALE OF ADMISSION TICKETS IN EXCESS OF THE PRINTED PRICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 44 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-344.1. Internet sale of admission tickets in excess of printed price.**

(a) Notwithstanding G.S. 14-344, nothing shall prohibit the resale or offering for resale via the Internet of an admission ticket, at any price, to an athletic contest, dance, theater, concert, circus, or other amusement, if the organizer of the event or the operator of the location where the event is occurring authorize admission tickets to the event to be resold for more than the price printed on the face of the ticket. If such resale is authorized, any admission ticket to the event may be resold or offered for resale through any Web site if the Web site's operator guarantees a full refund of the amount paid for the ticket under each of the following conditions:

(1) The ticketed event is cancelled.

(2) The purchaser is denied admission to the ticketed event, unless the denial is due to the action or omission of the purchaser.

(3) The ticket is not delivered to the purchaser in the manner described on the Web site or pursuant to the delivery guarantee made by the reseller and the failure results in the purchaser's inability to attend the ticketed event.

(b) A Web site operator's guarantee pursuant to this section shall be posted on the operator's Web site and a prospective purchaser shall be directed to such guaranty before completion of the resale transaction.

(c) A refund issued by a Web site operator pursuant to any of the conditions provided for in this section shall include any service, handling, or processing fees unless the fees are declared nonrefundable under the terms of the guarantee.

(d) If authorization to resell an admission ticket for more than the price printed on the face of the ticket is not granted by the organizer of the event or the operator of the location of the event pursuant to this section, no person or entity shall resell an admission ticket for more than the price printed on the face of the ticket.

(e) The provisions of this section shall not apply to student tickets issued by institutions of higher education in North Carolina for sporting events."

SECTION 2. Article 44 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-344.1. Bar on purchasing tickets in excess of maximum ticket limit.**

(a) For purposes of this section, the term "original ticket seller" means the issuer of a ticket or a person or firm who provides distribution services or ticket sales services under a contract with the issuer.

(b) Whoever knowingly purchases from the original ticket seller a quantity of tickets to an event that exceeds the maximum ticket limit quantity posted by or on behalf of the original ticket seller at the point of original sale or printed on the tickets themselves and intends to resell such tickets shall be in violation of G.S. 75-1.1.

(c) A person or firm is not liable under this section with respect to tickets for which that person or firm is the original ticket seller."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1407
PROPOSED COMMITTEE SUBSTITUTE S1407-CSRD-18 [v.2]

5/9/2007 4:11:56 PM

Short Title: Resale of Tickets via Internet. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS FROM UNLAWFUL SALE OF ADMISSION TICKETS IN EXCESS OF THE PRINTED PRICE AND TO PROHIBIT THE ACQUISITION OF MORE THAN THE ALLOWABLE MAXIMUM NUMBER OF TICKETS FOR RESALE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 44 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-344.1. Internet sale of admission tickets in excess of printed price.**

(a) Notwithstanding G.S. 14-344, nothing shall prohibit the resale or offering for resale via the Internet of an admission ticket, at any price, to an athletic contest, dance, theater, concert, circus, or other amusement, if the organizer of the event or the operator of the location where the event is occurring authorize admission tickets to the event to be resold for more than the price printed on the face of the ticket. If such resale is authorized, any admission ticket to the event may be resold or offered for resale through any Web site if the Web site's operator guarantees a full refund of the amount paid for the ticket under each of the following conditions:

(1) The ticketed event is cancelled.

(2) The purchaser is denied admission to the ticketed event, unless the denial is due to the action or omission of the purchaser.

(3) The ticket is not delivered to the purchaser in the manner described on the Web site or pursuant to the delivery guarantee made by the reseller and the failure results in the purchaser's inability to attend the ticketed event.

(b) A Web site operator's guarantee pursuant to this section shall be posted on the operator's Web site and a prospective purchaser shall be directed to such guaranty before completion of the resale transaction.

(c) A refund issued by a Web site operator pursuant to any of the conditions provided for in this section shall include any service, handling, or processing fees unless the fees are declared nonrefundable under the terms of the guarantee.

(d) If authorization to resell an admission ticket for more than the price printed on the face of the ticket is not granted by the organizer of the event or the operator of the location of the event pursuant to this section, no person or entity shall resell an admission ticket for more than the price printed on the face of the ticket.

(e) The provisions of this section shall not apply to student tickets issued by institutions of higher education in North Carolina for sporting events."

SECTION 2. Article 44 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-344.2. Bar on purchasing tickets in excess of maximum ticket limit.**

(a) For purposes of this section, the term "original ticket seller" means the issuer of a ticket or a person or firm who provides distribution services or ticket sales services under a contract with the issuer.

(b) Whoever knowingly acquires from the original ticket seller a quantity of tickets to an event that exceeds the maximum ticket limit quantity posted by or on behalf of the original ticket seller at the point of original sale or printed on the tickets themselves and intends to resell such tickets shall be in violation of G.S. 75-1.1.

(c) A person or firm is not liable under this section with respect to tickets for which that person or firm is the original ticket seller."

SECTION 3. This act becomes effective August 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1407:
Resale of Tickets via Internet

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 9, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S1407-CSRD		Committee Counsel

SUMMARY: Senate Bill 1407 would amend Article 44 (Regulation of Sales) of Chapter 14 (Criminal Law) of the General Statutes to enact new provisions addressing the resale of admission tickets to sporting, theater, and other entertainment events. Allowable prices and required guarantees for internet ticket sales would be addressed in proposed G.S. 14-344.1 and large quantity ticket purchases by ticket resellers would be addressed in proposed G.S. 14-344.2.

The Proposed Committee Substitute changes the effective date from December to August 1, 2007, changes 'purchases' to 'acquires' in Section 2 , and revises the statute number assigned to the new provision in Section 2 of the bill.

[As introduced, this bill was identical to H1418, as introduced by Rep. Saunders, which is currently in House Commerce, Small Business and Entrepreneurship .]

CURRENT LAW: Current statutory provisions addressing the sale of admission tickets limits the total amount that a seller or reseller of the tickets may charge to "...the combined face value of the ticket, tax, and the authorized service fee."[1] G.S. 14-344 then states that the "...service fee may not exceed three dollars for each ticket..." with a limited exception for certain arrangements evidenced by a written agreement. A violation of this section of the statutes is punishable as a Class 2 misdemeanor.

BILL ANALYSIS: Senate Bill 1407 would amend Article 44 (Regulation of Sales) of Chapter 14 (Criminal Law) of the General Statutes to enact new provisions addressing the resale of admission tickets to sporting, theater, and other entertainment events.

Section 1 – would enact G.S. 14-344.1. "Internet sale of admission tickets in excess of printed price", which would allow for the internet sale of admission tickets at any price if the following factors exist:

- The organizer of the event or operator of the event location authorizes the resale of tickets at more than face value; and
- The ticket sale web site operator guarantees a full refund if: 1) the event is canceled, 2) the ticket purchaser is denied entry to the event (through no fault of the purchaser), or 3) the ticket is not delivered to the purchaser as guaranteed by the seller or web site, causing the purchaser to miss the event.

G.S. 14-344.1 would also require that:

- The web site's guarantee is posted on the web site and is made clear to the purchaser before completion of the ticket resale transaction.
- Refunds issued by a web site operator include service, handling or processing fees, unless declared nonrefundable under the terms of the guarantee.

[1] G.S. 14-344. Sale of admission tickets in excess of printed price.

- Resellers may not resell a ticket at more than face value unless specifically authorized to do so by the event organizer/operator.
- The provisions of this act do not apply to student tickets issued by "...institutions of higher education in North Carolina for sporting events."

Section 2 – would enact new G.S. 14-344.2 "Bar on purchasing tickets in excess of maximum ticket limit" that would prohibit the acquisition of more than the 'maximum ticket limit quantity', as posted at the point of sale or on the tickets themselves, by individuals intending to resell the tickets.

Violations of this provision would be declared to be violations of G.S. 75-1.1 "Methods of competition, acts and practices regulated; legislative policy." Violation of G.S. 75-1.1 may be investigated and prosecuted by the Attorney General and may lead to the imposition of civil penalties of up to $5,000 per violation[2] with the possibility of treble damages in the event that the violation results in injury to a person or the destruction of or injury to a person's business.[3]

EFFECTIVE DATE: This act becomes effective August 1, 2007, and applies to offenses committed on or after that date.

S1407e1-SMRD-CSRD

[2] G.S. 75-15.2. Civil penalty.
[3] G.S. 75-16. Civil action by person injured; treble damages.

NCAA First and Second Round Tickets

NCAA Tournament Buffalo Tickets
NCAA Tournament Chicago Tickets
NCAA Tournament Columbus Tickets
NCAA Tournament Lexington Tickets
NCAA Tournament New Orleans Tickets
NCAA Tournament Sacramento Tickets
NCAA Tournament Spokane Tickets
> NCAA Tournament Winston Salem Tickets

Home > Sports > Basketball > NCAA Basketball > 2007 NCAA Tournament > NCAA First and Second R

NCAA Tournament Tickets 2007 - Winston Salem

NCAA Tournament Tickets - Winston-Salem - A Basketbal Tradition

The City of the Arts welcomes high-flying NCAA artists of the hard court for Four action. Local powerhouse Wake Forest, no stranger to the Big Dance set a rich tradition of basketball glory in Winston-Salem. Hoop fans from ac nation will feel at home celebrating the nation's top tourney at Lawrence Jo Veteran's Memorial Coliseum.

Sold out? So what! Get your NCAA Tournament Winston-Salem tickets a StubHub today and shop the only fan-to-fan marketplace with the **FanProt Guarantee**.

Event	Date	Venue	Price Range	
2007 NCAA Tournament Winston Salem Tickets Strip (Inlcudes Tickets for all Three Sessions)		Lawrence Joel Coliseum in Winston Salem, NC	$193 - $877	Bu
NCAA Tournament Winston Salem Tickets - Session One (Texas Tech vs Boston College,Belmont vs Georgetown) 3/15	3-15-2007 Thursday 12:25 PM	Lawrence Joel Coliseum in Winston Salem, NC	$55 - $295	Bu
NCAA Tournament Winston Salem Tickets - Session Two (Michigan State vs Marquette, Eastern Kentucky vs North Carolina) 3/15	3-15-2007 Thursday 7:20 PM	Lawrence Joel Coliseum in Winston Salem, NC	$94 - $324	Bu
NCAA Tournament Winston Salem Tickets - Session Three 3/17	3-17-2007 Saturday 12:00 PM	Lawrence Joel Coliseum in Winston Salem, NC	$126 - $861	Bu

Have questions about how to buy tickets or sell tickets? Email or call us toll free at 866.StubHub (866.788.2482). Customer se

or sell tickets from 5:00 AM - 8:00 PM Pacific Time weekdays or 7:00 AM - 6:00 PM Pacific Time weekends.

You are buying tickets from a third party; neither StubHub.com nor StubHub, Inc. is the ticket seller. Ticket prices are set by the face value. ALL SALES AND BIDS ARE FINAL. No refunds, transaction cancellations or exchanges will be issued for date/time performances. Cancelled events will be handled on a case by case basis. All prices listed are in US dollars.

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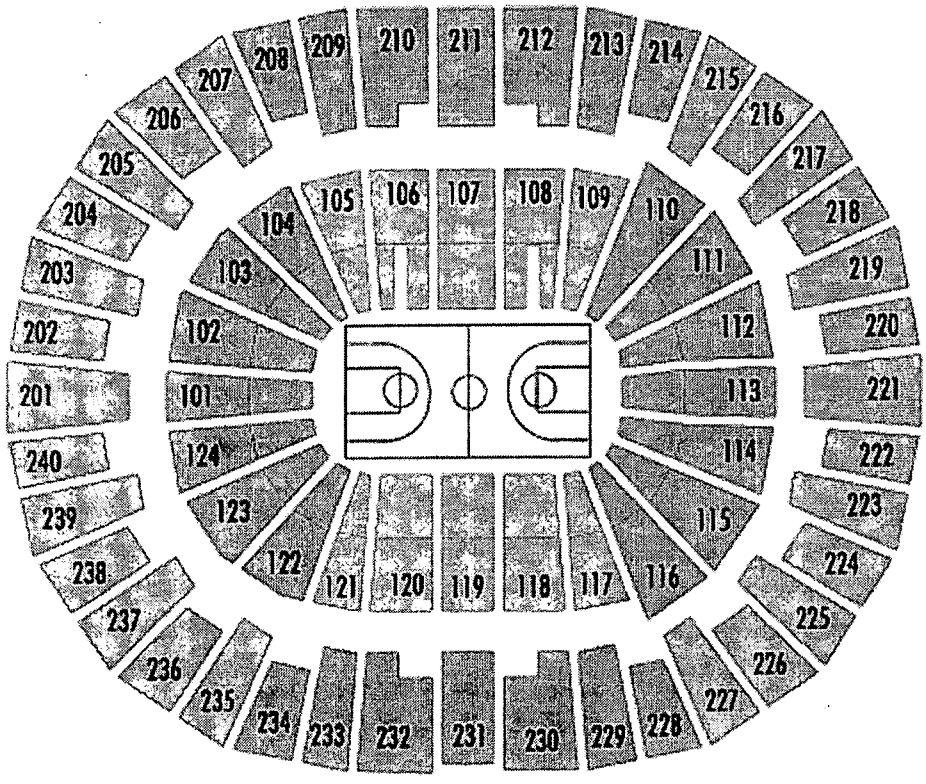
Lawrence Joel Veterans Memorial Coliseum

Winston-Salem, North Carolina



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Session 1-BC vs Texas Tech, G'town vs Belmont

NCAA Mens Basketball Tournament tickets may be sold for more than the price listed on the ticket.

Back to list of items Listed in category: Tickets > Event Tickets

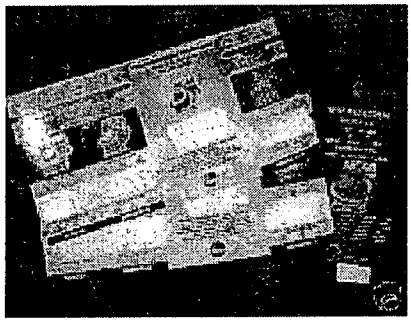
2 NCAA Basketball Tickets 1&2 Rounds WINSTON SALEM NC

Item number: 130089172263

1ST ROW of SECTION - VIP PARKING PASS - AISLE SEATS

Bidder or seller of this item? Sign in for your status

Watch this item in My eBay



View larger picture

Current bid: **US $449.44** **Place Bid >**

Make no payments for 3 months Apply

End time: **27 mins 38 secs** (Mar-12-07 15:04:41 PDT)

Shipping costs: **US $25.00**
Overnight Flat Rate Shipping Service
Service to United States

Ships to: United States

Item location: Dublin, Ohio, United States

History: 3 bids

High bidder: Bidder 3

You can also: Watch This Item

Get alerts via Text message, IM or Cell phone
Email to a friend

Listing and payment details: Show

Mee
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Feed
Mem

- R
- A
- A
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Buy

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2. C
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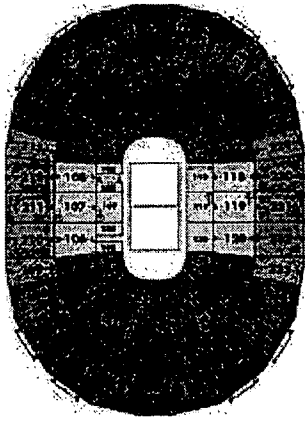
Description



Item Specifics - Tickets

Event Name:	**NCAA Mens Basketball - 1st and 2nd Rounds (NC) (Both Days)**	Number of Tickets:	**2**
Event Type:	**Sporting Events**		
	Basketball-College	Section:	**208**
		Row:	**F**
Venue State/Province:	**North Carolina**		
Venue City:	**Winston-Salem**	Month:	**March**
Venue Name:	**Joel Coliseum**	Day:	**15**
		Year:	**2007**

Stock Photo Time: **TBA**

Season Tickets: --

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March Madness is Back in Winston-Salem, NC

2 AISLESEATS - 1ST ROW

(check the map)
Outstanding View for all the Action
Includes VIP PARKING PASS

NCAA Men's Basketball Tournament
First and Second Rounds

March 15 - 2 Sessions - 4 Games

March 17 - 1 Session - 2 Games

2 SEATS - SIDE BY SIDE FOR ALL 6 GAMES

208 ROW F
SEATS 1 & 2

Winston-Salem, NC at LJVM Coliseum
Fantastic Venue for Viewing (only Seats 14,665)
Don't get caught in all the traffic and miss the action
The arena will be at capacity
Special VIP ONLY Parking Entrance

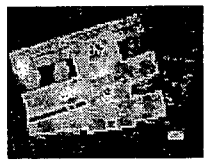
Don't get caught sitting in some "hard to see from" endzone lowers

The actual tickets and parking pass are pictured and ready to ship upon payment by the winning b
Will only ship to paypal verified addresses.

Please contact me with any questions. Thanks for looking and happy bidding!!!

North Carolina residents: North Carolina state law limits the resale ticket price for this event location, so maximum bid cannot exceed $1116.00. See eBay's ticket policy.

Select a picture



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Ships to
United States

Country: United States

Shipping and Handling	To	Service
US $25.00	United States	Overnight Flat Rate Shipping Service 1 business day*

Domestic handling time
Will usually ship within 1 business day of receiving cleared payment.

Shipping insurance
Not offered

Return policy

Return policy not specified.
Read item description for any reference to return policy.

Payment details

Payment method	Preferred/Accepted	Buyer protection on

eBay

PayPal Accepted

PayPal This item is covered up to $200 See eligibility

Learn about payment methods

Seller's payment instructions
Winning Bidder to contact seller within 2 hours of auction close. Payment to be received by seller within 4 hours of auction close. Tickets will be shipped upon confirmed payment.

Take action on this item

Help

Item title: 2 NCAA Basketball Tickets 1&2 Rounds WINSTON SALEM NC

Place a bid

Current bid: US $449.44

Your maximum bid: US $ [ ] (Enter US $454.44 **or more**)

Place Bid > You will confirm in the next step.

eBay automatically bids on your behalf **up to** your maximum bid. Learn about bidding.

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Other options

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eBay official time

Too much inventory makes legal scalping a tough sell

Florida Sentinel - February 19, 2007

You'd think that ticket scalpers would be happy about a new state law that makes their profession legal. But that's not the case.

"Now that everyone can do it, I have to drop my prices," said a man selling tickets outside the Volusia Mall who would only identify himself as "Fat Boy from Jacksonville."

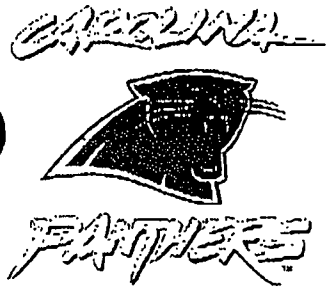
About two hours before the race, the man and several other ticket sellers stood across from the track holding up a handful of tickets. They all agreed that it was a buyer's market this year because they didn't think the race would sell out. Fat Boy bought several tickets for $100 each that had a face value of $175. He sold two of them for $80 and said he'd be lucky if he could sell the rest.

Russell Walker, a ticket scalper from Atlanta, said even though he's been arrested for selling tickets several times, he still wishes the practice were illegal.

"People will pay a little more when they have to duck and dive," Walker said. "Now they can pick and choose what they want."

But one ticket seller said he is pleased that scalping is now legal in Florida.

"The cops are now concentrating on what they should be concentrating on -- things like terrorism," said the man, who would only identify himself as "Ted from Illinois."



CAROLINA PANTHERS

BUSINESS OPERATIONS
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CHARLOTTE, NC 28202-1502
TEL: 704-358-7000
FAX: 704-358-7618

WWW.PANTHERS.COM

April 11, 2007

The Honorable Fletcher L. Hartsell, Jr.
North Carolina General Assembly
518 Legislative Office Building
Raleigh, NC 27603

Dear Senator Hartsell:

We are writing to urge you to support S1407, the pending ticket resale legislation that will provide stronger protection and service to patrons and fans purchasing tickets from third parties to events in North Carolina.

With the expansion of the Internet, there has been an increase in the scope and reach of resellers and brokers to our patrons. This in turn has increased consumers' risk of purchasing fraudulent and counterfeit tickets, a problem we confront all too often at Panthers home games. Even with bar-coding and ticket scanning, we have a significant issue with counterfeit and illegal tickets that are sold by unscrupulous brokers for more than face value. At almost every Panthers home game (and other events at Bank of America Stadium), our customer service window deals with guests that are sold "bad" tickets through internet brokers and are not able to enter the stadium. S1407 will allow Panthers' fans and season ticket holders an alternative means of buying and selling tickets without having to become involved with potentially unscrupulous ticket brokers, and will allow us to provide the opportunity for tickets to be resold with the highest level of confidence in the security of the transaction and integrity of the ticket. We feel that this legislation is necessary to help protect our fans and to offer our season ticket holders a channel by which to resell their tickets legally and with the highest level of protection for all involved.

S1407 will enable us to make a stronger effort to counteract those brokers selling invalid tickets and allow resales through the team or venue resale market. At the very least, S1407 will allow us to offer our season ticket holders a secure and convenient way of reselling their tickets at market value in a manner that comports with North Carolina law. This would enhance our ability to

protect our fans, to strengthen and maintain our season ticket base, and to compete on a level playing field with the out-of-state and on-line ticket brokers who are not committed to the well-being of the Panthers nor the protection of our fans.

Unfortunately, the current law is almost impossible to enforce against website operators who do not have a physical presence within our state. This is not likely to change and we believe that consumer protection will be strengthened under S1407. The new law would allow North Carolina companies to compete with out-of-state brokers in the secondary ticket market, providing consumers with the highest level of security and service if there are any issues with their tickets.

In addition, we strongly support the inclusion of a primary market ticket limit provision in S1407 as a means of protecting fans' ability to access tickets in the primary market at face price. This will help ensure that, for primary market sales, there are legal guidelines in place limiting the number of tickets that may be purchased to a quantity that does not exceed the established ticket limit. The Panthers will always sell tickets to Panthers games at face value and limit the number of tickets that can be purchased on a per-game basis.

Although we are philosophically opposed to scalping, the reality is that the resale of tickets happens on a daily basis in our market. By updating our existing legislation, we can provide a legitimate market for resale that protects both the consumer and the team/venue.

Sincerely,

Mark S. Richardson
President
Carolina Panthers

CAROLINA PANTHERS

BUSINESS OPERATIONS
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CHARLOTTE, NC 28202-1502
TEL: 704-358-7000
FAX: 704-358-7618

WWW.PANTHERS.COM

April 11, 2007

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North Carolina General Assembly
2217 Legislative Building
Raleigh, NC 27601

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Mark S. Richardson
President
Carolina Panthers

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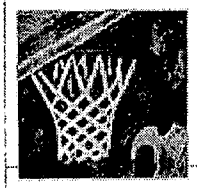

NCAA Mens Basketball Tournament
Thu, Mar 15 12:25 PM
Joel Coliseum - Winston Salem, NC

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Select # of Tickets: All 1 2 3 4 5 6 7 8+

Click here to compare ✓'d tickets

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☑	Section		Row	Price (ea)	Tickets Needed	
☐	214	Notes	U	$55	2	BUY
☐	207	Notes	U	$55	2	BUY
☐	233	Notes	L	$60	8	BUY
☐	215	Notes	N	$60	8	BUY
☐	238	Notes	H	$60	3	BUY
☐	225	Notes	H	$60	8	BUY
☐	224	Notes	L	$60	8	BUY
☐	201	Notes	G	$60	6	BUY
☐	205	Notes	T	$60	8	BUY
☐	207	Notes	H	$60	6	BUY
☐	237	Notes	R	$60	8	BUY
☐	234	Notes	J	$60	3	BUY
☐	234		K	$60	3	BUY
☐	227	Notes	M	$60	8	BUY
☐	225	Notes	F	$65	8	BUY
☐	227	Notes	T	$65	8	BUY

☐	227	Notes	T	$65	8		BUY
☐	216	Notes	M	$65	8		BUY
☐	235	Notes	T	$65	6		BUY
☐	223	Notes	H	$70	8		BUY
☐	236	Notes	Q	$70	8		BUY
☐	204	Notes	T	$70	4		BUY
☐	204	Notes	N	$70	4		BUY
☐	206	Notes	S	$70	6		BUY
☐	209		H	$70	8		BUY
☐	208	Notes	T	$70	8		BUY
☐	222	Notes	V	$80	2		BUY
☐	233	Notes	T	$80	8		BUY
☐	235	Notes	F	$80	4		BUY
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☐	218	Notes	V	$105	4		BUY
☐	101	Notes	X	$105	8		BUY
☐	216	Notes	V	$105	3		BUY

☐	211	Notes	B/C	$110	8		BUY
☐	206	Notes	N	$115	3		BUY
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☐	236	Notes	R	$115	4		BUY
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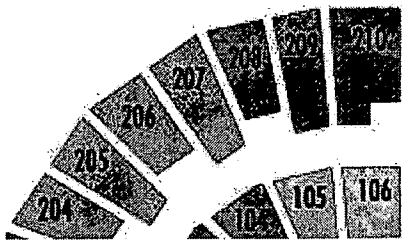
☐	113	Notes	M	$265	8		BUY
☐	113		F	$270	4		BUY
☐	113		G	$270	4		BUY

Seating Weather R

Lawrence Joel Veter

Winston-Sale



☐	122	Notes	R	$270	4		BUY
☐	101	Notes	H	$285	2		BUY
☐	116		R	$315	2		BUY
☐	Upp Behind	Notes	TBD	$320	4		BUY
☐	Upper Side	Notes	TBD	$430	2		BUY
☐	Lower End	Notes	TBD	$430	4		BUY
☐	Lower Side	Notes	TBD	$595	2		BUY

Parking

	Section		Row	Price (ea)	Tickets Needed		
☑	VIP	Notes	PARKIN	$170	1		BUY

boston.com

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Ticketmaster suits: Resellers used device to skirt security

The Boston Globe

Firm alleges 4 in state made illegal purchases

By Bruce A. Mohl, Globe Staff | April 26, 2007

A series of lawsuits filed by Ticketmaster LLC is shedding light on one of the biggest mysteries surrounding ticket resellers: Where do they get their tickets?

According to the lawsuits, the resellers buy tickets straight from Ticketmaster using sophisticated software that lets them bypass security measures and make rapid-fire purchases using multiple credit cards and e-mail addresses.

A suit filed in US District Court in Los Angeles accuses four Massachusetts residents of illegally buying more than 45,000 tickets on Ticketmaster.com since early 2003 and then reselling them at a profit.

Similar suits have been filed against resellers in Illinois and Texas and officials with RMG Technologies Inc. of Steubenville, Ohio. RMG allegedly orchestrated the ticket purchases using automated devices that allowed users to sidestep Ticketmaster security measures and ticket purchase limits, according to the lawsuit.

Since 2003, according to the lawsuits, resellers in the three states bought nearly 120,000 tickets through Ticketmaster and then resold them. Ticketmaster said other unnamed individuals may have purchased large quantities of tickets in the same way.

Joseph Freeman , vice president and assistant general counsel for Ticketmaster in West Hollywood, Calif., which sells tickets on behalf of sports teams, theaters, and concert venues across the country, said the company's investigation is continuing.

"We as a company are committed on behalf of our clients to putting as many tickets as possible in to the hands of fans at face price," Freeman said.

The four Massachusetts resellers were identified by Ticketmaster as Cheryl, Thomas, Kelly, and Ryan Prior .

Joseph S. Provanzano , an attorney representing the Priors, said Cheryl and Thomas are divorced and Kelly and Ryan are their children. He said Cheryl and the children had no knowledge of the ticket purchases.

Provanzano said Thomas J. Prior has bought tickets in the past through Ticketmaster and resold some of them and used some of them himself. He was unsure how many tickets in all had been purchased and resold or at what prices.

"He's a guy in his home," Provanzano said. "When tickets go on sale, he hires people to come in and buy tickets."

Massachusetts officials said no one named Prior is licensed as a ticket reseller here. State law requires anyone in the business of reselling tickets to be licensed by the state and charge no more than $2 above face value, plus certain service and business expenses.

Provanzano indicated Prior may have used the RMG technology, but he said it merely speeds up the ticket-purchasing process. He said Ticketmaster has not been harmed.

"Ticketmaster has always been paid for every single ticket that has been purchased," he said. He noted Prior tried to return some tickets to Ticketmaster and the company refused to provide a refund.

Ticketmaster has security measures in place to block automated attacks on its ticketing system, but it acknowledges in the lawsuits that the measures don't always work.

One Ticketmaster security program requires a customer placing a ticket order to read a series of random characters partially obscured behind hash marks and then retype those characters into a box. The purpose of the program is to make sure the order is being placed by a person rather than a computer.

In its lawsuits, Ticketmaster said most automated devices cannot decipher and retype the random characters and therefore cannot complete a ticket transaction. But Ticketmaster said software "bots" developed by RMG can circumvent the security program, allowing ticket brokers to buy tickets much faster and in greater quantities than the general public.

"A customer can use multiple bots -- sometimes hundreds of them -- simultaneously to flood the Ticketmaster website with requests for tickets," Ticketmaster said in its lawsuit against RMG.

The lawsuit said RMG screens all of its customers carefully to make sure they won't alert Ticketmaster. Because of RMG's safety precautions, Ticketmaster said it took years to uncover the ticket-buying system.

"Ticketmaster is informed and believes that defendants have consulted with customers throughout the United States, including in California, to lend assistance in establishing or expanding the customers' illegal ticket-buying activities," the RMG lawsuit says.

Bruce Mohl can be reached at mohl@globe.com. ■

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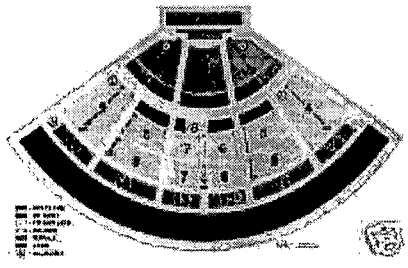
2 GWEN STEFANI TICKETS 5/12 VERIZON WIRELESS CHARLOTTE

Item number: 170108069534

FRONT ROW CENTER PIT - HARD TICKETS READY TO SHIP!!!!

Seller of this item? Sign in for your status

Watch this item in My eBay



View larger picture

Starting bid:	**US $1,200.00**	**Place Bid >**
Buy It Now price:	**US $1,200.00**	**Buy It Now >**
	Make no payments for 3 months Apply	
End time:	**May-12-07 08:50:24 PDT** (2 days 17 hours)	
Shipping costs:	**US $20.00** Standard Flat Rate Shipping Service Service to United States	
Ships to:	N. and S. America, Europe, Asia, Australia	
Item location:	The Woodlands, Texas, United States	
History:	0 bids	
You can also:	Watch This Item	
	Get alerts via Text message, IM or Cell phone Email to a friend	

Listing and payment details: Show

Mee
Selle
Feed
Mem
- R
- A
- A
- V

Buy
1. C
   S
   R
2. C

Description (revised)

Item Specifics - Tickets

Event Type:	**Concerts Rock/Pop/Altern.**	Number of Tickets:	**2**
		Section:	**2**
Venue State/Province:	**North Carolina**	Row:	**1**
Venue City:	**Charlotte**		
Venue Name:	**Verizon Wireless Amphitheatre**	Month:	**May**

Click to View Map

Day: 12
Year: 2007

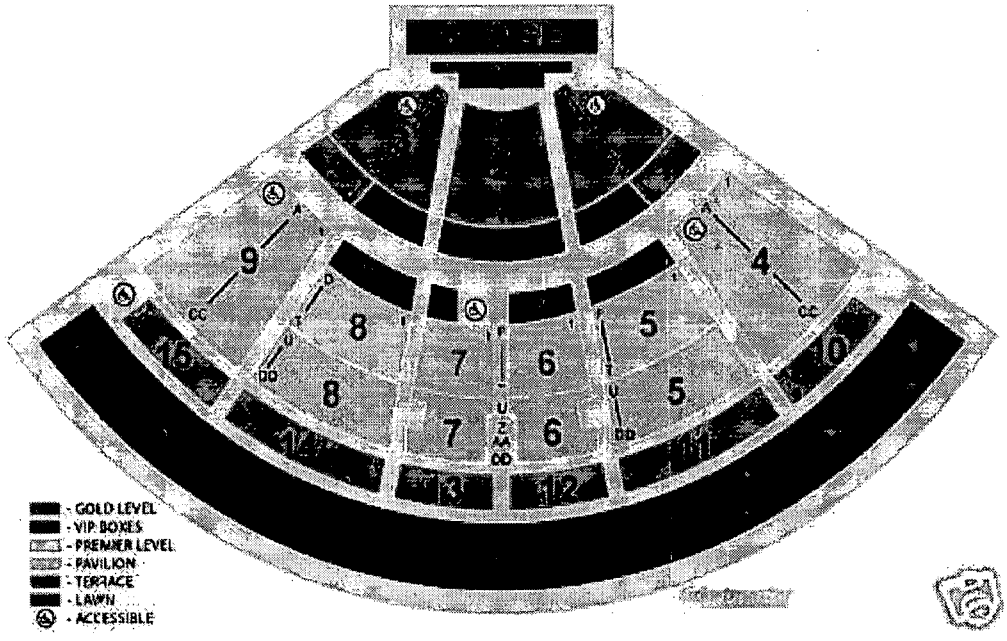
Season Tickets: --

YOU ARE BIDDING ON TWO TICKETS TO SEE GWEN STEFANI LIVE AT THE VERIZON WIRELESS AMPHITHEATRE ON SATURDAY MAY 12TH AT 7:30 PM!!!! THESE TICKETS ARE LOCATED IN THE CENTER IN SECTION 2 ROW 1 SEATS 9-10!!!! THAT IS ABSOLUTE FRONT ROW FROM THE STAGE IN THE CENTER PIT !!!! THESE TICKETS ARE HARD STOCK TICKETS THAT ARE IN HAND AND READY TO SHIP!!!! PLEASE CHECK MY FEEDBACK AND BID WITH CONFIDENCE. PLEASE FEEL FREE TO ASK ANY QUESTIONS VIA EMAIL OR CALL ME AT 832-274-7682.

ALL TICKETS WILL BE SHIPPED VIA FED EX STANDARD OVERNIGHT DELIVERY AT A COST OF $20 TO THE BUYER. ($25 IF PRIORITY OVERNIGHT IS NECESSARY AND $35 FOR ANY SATURDAY DELIVERIES) TICKETS WILL BE SHIPPED TO CONFIRMED AND/OR BILLING ADDRESSES ONLY!!!! WE ACCEPT PAYPAL, MONEY ORDERS AND ALL MAJOR CREDIT CARDS.

IF YOU HAVE LESS THAN FIVE FEEDBACKS, PLEASE CONTACT ME BEFORE BIDDING!!!! OTHERWISE, WE HAVE THE RIGHT TO CANCEL YOU BID!!!!

North Carolina residents: North Carolina state law limits the resale ticket price for this event location, so your maximum bid cannot exceed $576.00. See eBay's ticket policy.



00036

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Shipping and handling

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N. and S. America, Europe, Asia, Australia

Country: United States

Shipping and Handling	To	Service
US $20.00	United States	Standard Flat Rate Shipping Service

Shipping insurance
Not offered

Return policy

Return policy not specified.
Read item description for any reference to return policy.

Payment details

Payment method	Preferred/Accepted	Buyer protection on eBay
PayPal VISA AMEX DISCOVER eCHECK	Seller Preferred	PayPal Up to $2,000 in buyer protection. See eligibility
Money order/Cashiers check	Accepted	Not Available
Other - See Payment Instructions for payment methods accepted	Accepted	Not Available

Learn about payment methods

Seller's payment instructions
Buyer may pay by credit card via Pay Pal or phone. I will also accept money orders and cashiers checks if sent by a trackable means such as UPS or Fed Ex.

Thanks

Take action on this item

Item title: 2 GWEN STEFANI TICKETS 5/12 VERIZON WIRELESS CHARLOTTE

Place a bid

Starting bid: **US $1,200.00**

Your maximum bid: US $ [ ]

(Enter US $1,200.00 **or more**)

Place Bid >

You will confirm in the next step.

eBay automatically bids on your behalf **up to** your maximum bid.
Learn about bidding.

or

Buy It Now

Buy It Now price: **US $1,200.00**

Buy It Now >

You will confirm in the

Purchase this item now without biddi
Learn about Buy It Now.

You can also [Watch This Item]

This is a private listing. Your identity will not be disclosed to anyone except for the seller.

Other options

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Seller assumes all responsibility for listing this item.

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eBay official time

Senate 1407 Ticket Resale Bill – *Amendments Needed For True Open Market*

Tickets for concerts, ballgames, performances and other entertainment events held in North Carolina are usually sold on behalf of the venue by a ticket-selling company. This primary ticket seller charges fees the consumer must pay, in addition to the cost of admission.

Current state law limits any resale of tickets to a price no greater than $3.00 over face value. S 1407 attempts to create an exception where the resale occurs on a web site with a money-back guarantee.

Unfortunately, as introduced, S 1407 also includes two *anti-competitive, market-closing limitations,* making the bill worse for the public than the current law:

- Section 1 limits this type of ticket resale only where the event venue authorizes resale. This provision is harmful in two different ways—
    - Under the current bill language, a venue can contractually agree with the primary ticket seller for that company to be the exclusive authorized reseller—to the exclusion of all others. This could often result in only one company in the resale market for most events. The provision is anti-competitive and unfair.
    - The provision allows the venue to turn authorization on and off, like a spigot. How would the average consumer know if resale was authorized at a given moment? Someone could resell a ticket and unknowingly be exposed to liability for treble damages and attorneys fees. This is anti-consumer.
- Section 2 of the bill artificially limits how many tickets a consumer can purchase. This provision has no place in a bill seeking to truly open the resale market to consumers.
    - Why should the number of tickets a buyer purchases be regulated by state law? The primary ticket seller and the venue can limit sales easily using existing technology. This provision only benefits the primary ticket seller, as a venue wants its events to sell out as often and as quickly as possible.

S 1407 should be amended to revise Section 1 and delete Section 2 to ensure a truly open resale market. A pending House bill, H 1639, opens the resale market without these unreasonable provisions.

If S 1407 is not amended, the bill should be defeated. The current statute is better for the consumer than a new law favoring one company and exposing the consumer to unexpected liability.

For more information, please contact Bill Scoggin, registered lobbyist for eBay, at 919.523.0425 or bscoggin@kennedycovington.com.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1430

Short Title:	Amend Crim Offenses/Injury to Property.	(Public)
Sponsors:	Senator Atwater.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSES OF INJURING REAL PROPERTY AND INJURING PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-127 reads as rewritten:

"**§ 14-127. Willful and wanton injury to real property.**

~~If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.~~

(a) Any person who willfully and wantonly damages, injures, or destroys any real property, either of a public or private nature, is guilty of a criminal offense punishable as follows:

(1) If the damage is one thousand dollars ($1,000) or less, the offense is a Class 1 misdemeanor.

(2) If the damage exceeds one thousand dollars ($1,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class H felony.

(3) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class D felony.

(b) This section applies to injuries to real property without regard to whether the property is destroyed or not."

SECTION 2. G.S. 14-160 reads as rewritten:

"**§ 14-160. Willful and wanton injury to personal property; punishments.**

(a) ~~If any person shall wantonly and willfully injure the personal property of another he shall be guilty of a Class 2 misdemeanor.~~ Any person who wantonly and willfully injures the personal property of another is guilty of a criminal offense punishable as follows:

(1) If the damage is two hundred dollars ($200.00) or less, the offense is a Class 2 misdemeanor.

(2) If the damage exceeds two hundred dollars ($200.00) but does not exceed one thousand dollars ($1,000), the offense is a Class 1 misdemeanor.

(3) If the damage exceeds one thousand dollars ($1,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class I felony.

(4) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class D felony.

~~(b) Notwithstanding the provisions of subsection (a), if any person shall wantonly and willfully injure the personal property of another, causing damage in an amount in excess of two hundred dollars ($200.00), he shall be guilty of a Class 1 misdemeanor.~~

(c) This section applies to injuries to personal property without regard to whether the property is destroyed or not."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

SENATE BILL 1430:
Amend Crim Offenses/Injury to Property

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 9, 2007
Introduced by:	Sen. Atwater	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1430 would amend two existing provisions of criminal law applying to damage to property. Amended G.S. 14-127 would replace the existing class 1 misdemeanor offense for damage to real property with three separate levels of offenses (from Class 1 misdemeanor to Class D felony) based on the amount of damage inflicted to the real property. Amended G.S. 14-160 would replace the existing Class 1 or 2 misdemeanor offenses for damaging personal property with four separate levels of offenses (from Class 2 misdemeanor to Class D felony) based on the amount of damage inflicted to the personal property.***

CURRENT LAW: Injury to real property is currently punishable as a Class 1 misdemeanor offense, regardless of the amount of damage inflicted[1]. For the purposes of this statute, real property may be regarded as land and anything fixed to it or a part of it, such as buildings, fences, water, minerals, etc.

Injury to personal property is currently punishable as a Class 1 misdemeanor offense if the amount of damage is more than $200.00, and as a Class 2 misdemeanor if the amount of damage is $200.00 or less. The extent of the damage is determined by the differential in market value just before and just after the injury[2], or, in the absence of an established market value, by the cost of repair.[3] For the purposes of this statute, personal property is property other than real property.

BILL ANALYSIS: Senate Bill 1430 would amend G.S. 14-127 "Willful and wanton injury to real property" and G.S. 14-160 "Willful and wanton injury to personal property; punishments".

G.S. 14-127 would provide three separate levels of offenses, based on the following amounts of damage to real property:

- Class 1 misdemeanor – damage of $1,000 or less.
- Class H felony – damage greater than $1,000 and up to and including $100,000.
- Class D felony – damage exceeding $100,000.

G.S. 14-160 would provide four separate levels of offenses, based on the following amounts of damage to personal property:

- Class 2 misdemeanor – damage of $200 or less.
- Class 1 misdemeanor – greater than $200 and up to and including $1,000
- Class I felony – damage greater than $1,000 and up to and including $100,000.
- Class D felony – damage exceeding $100,000.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

S1430e1-SMRD

[1] G.S. 14-127. Willful and wanton injury to real property.
[2] 220 N.C. 721.
[3] 261 N.C. 710.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 728

Short Title:	Mediation in District Criminal Courts.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE MEDIATION IN DISTRICT CRIMINAL COURTS AND TO ESTABLISH A PROGRAM WITHIN THE DISPUTE RESOLUTION COMMISSION FOR THE CERTIFICATION OF MEDIATORS WORKING IN THE DISTRICT CRIMINAL COURTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3D. Mediation in matters within the jurisdiction of the district criminal courts.**

(a) Purpose. – The General Assembly finds that it is in the public interest to promote high standards for persons who mediate matters in district criminal court. To that end, a program of certification for these mediators shall be established in judicial districts designated by the Dispute Resolution Commission and the Director of the Administrative Office of the Courts and in which the chief district court judge, the district attorney, and the community mediation center agree to participate. This section does not supercede G.S. 7A-38.5.

(b) Enabling Authority. – In each district, the court may encourage mediation for any criminal district court action pending in the district, and the district attorney may delay prosecution of those actions so that the mediation may take place.

(c) Program Administration. – A community mediation center established under G.S. 7A-38.5 and located in a district designated under subsection (a) of this section shall assist the court in administering a program providing mediation services in district criminal court cases. A community mediation center may assist in the screening and scheduling of cases for mediation and provide certified volunteer or staff mediators to conduct district criminal court mediations.

(d) Rules of Procedure. – The Supreme Court shall adopt rules to implement this section. Each mediation shall be conducted pursuant to this section and the Supreme Court Rules as adopted.

(e) Mediator Authority. – In the mediator's discretion, any person whose presence and participation may assist in resolving the dispute or addressing any issues underlying the mediation may be permitted to attend and participate. The mediator shall have discretion to exclude any individual who seeks to attend the mediation, but whose participation the mediator deems would be counterproductive. Lawyers for the participants may attend and participate in the mediation.

(f) Mediator Qualification. – The Supreme Court shall establish requirements for the certification or qualification of mediators serving under this section. The Court shall also establish requirements for the qualification of training programs and trainers, including community mediation center staff, that trains these mediators. The Court shall also adopt rules regulating the conduct of these mediators and trainers.

(g) Oversight and Evaluation. – The Supreme Court may require community mediation centers and their volunteer or staff mediators to collect and report caseload statistics, referral sources, fees collected, and any other information deemed essential for program oversight and evaluation purposes.

(h) Immunity. – A mediator under this section has judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that a mediator may be disciplined in accordance with procedures adopted by the Supreme Court. A community mediation center and its staff involved in supplying volunteer or staff mediators or other personnel to schedule cases or perform other duties under this section are immune from suit in any civil action, except in any case of willful or wanton misconduct.

(i) Confidentiality. – Any memorandum, work note, or product of the mediator and any case file maintained by a community mediation center acting under this section and any mediator certification application are confidential.

(j) Inadmissibility of Negotiations. – Evidence of any statement made and conduct occurring during a mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action from which the mediation arises. Any participant in a mediation conducted under this section, including the mediator, may report to law enforcement personnel any statement made or conduct occurring during the mediation process that threatens or threatened the safety of any person or property. A mediator has discretion to warn a person whose safety or property has been threatened. A mediator may testify in matters and under circumstances as set forth in subsection (k) of this section. No evidence otherwise discoverable is inadmissible for the reason it is presented or discussed in a mediated settlement conference or other settlement proceeding under this section.

(k) Testimony. – No mediator or neutral observer present at the mediation shall be compelled to testify or produce evidence concerning statements made and conduct occurring in or related to a mediation conducted under this section in any proceeding in the same action for any purpose, except in:

(1) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.

(2) Disciplinary proceedings before the North Carolina State Bar or any agency established to enforce standards of conduct for mediators.

(3) Proceedings in which the mediator acts as a witness pursuant to subsection (j) of this section.

(4) Trials of a felony, during which a presiding judge may compel the disclosure of any evidence arising out of the mediation, excluding a statement made by the defendant in the action under mediation, if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to the proper administration of justice and the evidence cannot be obtained from any other source.

(l) Written Agreements. – Any agreement reached in mediation shall be reduced to writing and signed by the parties. A non-attorney mediator may assist parties in reducing the agreement to writing.

(m) Dismissal Fee. – Where an agreement has been reached in mediation and the case will be dismissed, the defendant shall pay to the clerk the dismissal fee of court set by G.S. 7A-38.7. By agreement, all or any portion of the fee may be paid by a person other than the defendant. The judge may in the judge's discretion waive the fee for good cause shown.

(n) Definitions. – As used in this section, the following definitions apply:

(1) Court. – A district court judge, a district attorney, or the designee of a district court judge or district attorney.

(2) Neutral observer. – Includes any person seeking mediator certification, any person studying any dispute resolution process, and any person acting as an interpreter."

SECTION 2. G.S. 7A-38(a) reads as rewritten:

"(a) The Supreme Court ~~is authorized to~~may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, G.S. 7A-38.3B, G.S. 7A-38.3D, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 3. G.S. 7A-38.2(c) reads as rewritten:

"(c) The Dispute Resolution Commission shall consist of ~~15~~16 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be superior court judges, and at least two of whom shall be district court judges; one clerk of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; one certified district criminal court mediator who is a representative of a community mediation center appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one

of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Members shall initially serve four-year terms, except that one judge, one mediator, one attorney, and the citizen member appointed by the Governor, shall be appointed for an initial term of two years. Incumbent members as of September 30, 1998 shall serve the remainder of the terms to which they were appointed. Members appointed to newly-created membership positions effective October 1, 1998 shall serve initial terms of two years. Thereafter, members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North Carolina ~~Association~~ Conference of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts."

SECTION 4. The Supreme Court shall adopt rules under G.S. 7A-38.3D(d), as enacted in Section 1 of this act, and shall establish requirements for the certification or qualification under G.S. 7A-38.3D(f), as enacted by Section 1 of this act, no later than January 1, 2008.

SECTION 5. This act is effective when it becomes law and applies to mediations conducted on and after the date the Supreme Court adopts rules and requirements for the certification or qualification under Section 4 of this act.

SENATE BILL 728:
Mediation in District Criminal Courts

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 14, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 728 would amend Article 5 (Jurisdiction) of Chapter 7A (Judicial Department) by enacting a new G.S. 7A-38.3D "Mediation in matters within the jurisdiction of the district criminal courts." This new section would establish a program for certification of mediators in district courts, would direct participating community mediation centers to assist the court in administering the program, and would direct the Supreme Court to set requirements for mediator and mediator trainer qualifications and to adopt rules for implementation of the new section.***

SB 728 would also increase the size of the Dispute Resolution Commission to 16 members by creating an additional slot for a 'certified district criminal court mediator', to be appointed by the Chief Justice of the Supreme Court.

BILL ANALYSIS: Senate Bill 728 would amend Article 5 (Jurisdiction) of Chapter 7A (Judicial Department) by enacting a new G.S. 7A-38.3D "Mediation in matters within the jurisdiction of the district criminal courts." This new section would establish a program for certification or qualification of mediators in judicial districts in which the chief district court judge, the district attorney, and the community mediation center agree to participate. Senate Bill 728 would provide for the following:

- Authorize courts to encourage mediation in criminal district court and allow DAs to delay prosecution of cases to allow time for mediation to take place.
- Direct community mediation centers to assist courts in administering the program providing mediation services in district criminal court cases, and allow centers to assist in screening and scheduling of cases for mediation and provide certified mediators to conduct criminal district court mediations.
- Direct the Supreme Court to:
    - Adopt rules to implement the new section of law.
    - Establish requirements for certification or qualification of mediators serving under this section, and for qualification of training programs and trainers.
    - Adopt rules regulating the conduct of these mediators and trainers.
    - Allow for requiring centers and staff/volunteers to collect data (caseload statistics, fees collected, etc.) for program oversight and evaluation.
- Grant mediators judicial immunity, subject to disciplinary procedures adopted by the Supreme Court.
- Declare mediator work product and mediation center case files confidential.
- Bar mediators and neutral observers from being compelled to testify in proceedings in the same action, about statements made in or relating to mediation, with certain exceptions.
- Direct for mediation agreements to be reduced to writing and signed by parties.

- Direct defendant to pay clerk the dismissal fee, as set by G.S. 7A-38.7, for cases dismissed as a result of a mediated agreement, providing that others may agree to pay the fee instead of the defendant and the judge may waive the fee "...for good cause shown."

SB 728 would amend G.S. 7A-38(a) to include mediators certified or qualified under this section among those for whom the Supreme Court may adopt standards of conduct. SB 728 would also amend G.S. 7A-38.2(c) to increase the size of the Dispute Resolution Commission to 16 members, by creating an additional slot for a 'certified district criminal court mediator', to be appointed by the Chief Justice of the Supreme Court.

Finally, the act would direct the Supreme Court to adopt rules (under G.S. 7A-38.3D(d)) and establish requirements for certification or qualification (under G.S. 7A-38.3D(f)), no later than January 1, 2008.

EFFECTIVE DATE: This act is effective when it becomes law, and would apply to mediations conducted on or after the date the Supreme Court adopts rules and requirements for certification or qualification of mediators pursuant to this act.

BACKGROUND: Local dispute settlement centers or mediation centers in the State date to the early 1970's and have grown through local collaborative efforts of local volunteers, paid staff, and district attorneys and district court judges. 24 centers currently receive State funding through the Administrative Office of the Courts. Roughly one year ago, several of the centers requested the establishment of a certification process for their court mediators. A committee consisting of center staff, volunteers, judges, DAs, and others developed the approach presented by SB 728, which was adopted by the NC Dispute Resolution Commission, the Dispute Resolution Committee of the State Judicial Council, and the State Judicial Council in November or December of 2006.

S0728e1-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 854

Short Title:	Amend Private Protective Services Act.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3 reads as rewritten:

"**§ 74C-3. Private protective services profession defined.**

(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) "Armored car profession" means any person, firm, association, or corporation which provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables for a fee or other valuable consideration. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) ~~"Counterintelligence service profession"~~"Electronic countermeasures profession' means any person, firm, association, or corporation which discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation for a fee or other valuable consideration.

(4) "Courier service profession" means any person, firm, association, or corporation which transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious service

for a fee or other valuable consideration. Armed courier service ~~guards~~ officers shall be subject to the provisions of G.S. 74C-13.

(5) "Detection of deception examiner" means any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(6) "Security ~~guard~~ officer and patrol profession" means any person, firm, association, or corporation that provides a security ~~guard~~ officer on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performing one or more of the following functions:

a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

b. Prevention, observation, or detection of any unauthorized activity on private property;

c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services; or

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(7) "Guard-dog service profession" means any person, firm, association, or corporation which contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property for a fee or other valuable consideration.

(8) "Private detective" or "private investigator" are synonymous and mean any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning the below-listed topics on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States;

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

c. The location, disposition, or recovery of lost or stolen property;

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties;

e. Securing evidence to be used before any court, board, officer, or investigative committee; or

f. Protection of individuals from serious bodily harm or death.

(9) "Special limited ~~guard~~ officer and patrol profession" means any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security ~~guard~~ officer and patrol license. Any experience gained under this limited license shall not be counted as experience for a security ~~guard~~ officer and patrol license.

(b) "Private protective services" shall not mean:

(1) Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance company;

(2) An officer or employee of the United States, this State, or any political subdivision of either while ~~such~~ the officer or employee is engaged in the performance of his or her official duties within the course and scope of his or her employment with the United States, this State, or any political subdivision of either;

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,

b. Information for employment purposes,

c. Information for the underwriting of insurance involving the consumer,

d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility, or

e. A legitimate business need for the information in connection with a business transaction involving the consumer;

(4) An attorney at law licensed to practice in North Carolina while engaged in ~~such~~ the practice of law and ~~his~~ the attorney's agent, provided ~~said~~ the agent is performing duties only in connection with his or her principal's practice of law;

(5) The legal owner or lien holder, and his or her agents and employees, of personal property which has been sold in a transaction wherein a security interest in personal property has been created to secure the

sales transaction, who engage in repossession of ~~said~~ the personal property;

(6) Repealed by Session Laws 1989, c. 759, s. 3.

(7) Repealed by Session Laws 1981, c. 807, s. 1.

(8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job for that person, firm, association, or corporation and, while performing ~~such~~ the job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a licensee;

(9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General Statutes;

(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment;

(11) A person who conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:

a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) Research laboratories and consultants who analyze, test, or in any way apply their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and give their opinions and findings to the requesting source or to a designee of the requestor;

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security ~~guard~~ officer and wears, carries, or possesses a firearm in the performance of ~~his~~ the employee's duties, the provisions of G.S. 74C-13 apply;

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the business; or

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts."

SECTION 2. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court;

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such schools; ~~and~~

(10) Contract for services as necessary to carry out the functions of the ~~Board.~~Board;

(11) Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter; and

(12) Approve a design for a badge or shield that indicates a person is licensed to engage in private protective services."

SECTION 3. G.S. 74C-9 reads as rewritten:

"**§ 74C-9. Form of license; term; renewal; posting; branch offices; not assignable; late renewal fee.**

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee,

(2) The name under which the licensee is to operate, and

(3) The number and expiration date of the license.

(b) The license shall be issued for a term of ~~one year.~~two years. A trainee permit shall be issued for a term of ~~one year.~~two years. All licenses must be renewed prior to the expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the licensee's principal place of business, in North Carolina, unless for good cause exempted by the Director. A license issued under this Chapter is not assignable. The Board may require all licensees to complete continuing education courses approved by the Board before renewal of their licenses.

(c) Repealed by Session Laws 1989, c. 759, s. 7.

(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of one year. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ($50.00);

(5) A late renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the licensee;

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);
(7) An application fee for ~~an armed security guard~~a firearm registration permit not to exceed fifty dollars ($50.00);
(8) A new, renewal, replacement, or reissuance fee for ~~an armed security guard~~a firearm registration permit not to exceed thirty dollars ($30.00);
(9) An application fee for certification as a certified trainer not to exceed fifty dollars ($50.00);
(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ($25.00);
(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);
(12) An unarmed registration transfer fee not to exceed fifteen dollars ($15.00);
(13) A branch office license fee not to exceed fifty dollars ($50.00); and
(14) A special limited ~~guard~~ officer and patrol license fee not to exceed one hundred dollars ($100.00).

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter.

(f) A license or trainee permit granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by the licensee or permit holder to the Director of intended renewal, the payment of the proper fee, and evidence of a policy of liability insurance as prescribed in G.S. 74C-10(e).

The renewal shall be finalized before the expiration date of the license. In no event will renewal be granted more than three months after the date of expiration of a license or trainee permit.

(g) Upon notification of approval of ~~his~~ the application by the Board, an applicant must furnish evidence that ~~he~~ the applicant has obtained the necessary liability insurance required by G.S. 74C-10 and obtain the license applied for or ~~his~~ the application shall lapse.

(h) Trainee permits shall not be issued to applicants that qualify for a private detective license. A licensed private detective may supervise no more than five trainees at any given time."

SECTION 4. G.S. 74C-11 reads as rewritten:

"**§ 74C-11. Probationary employees and registration of regular employees; unarmed security ~~guard~~ officer required to have registration card.**

(a) All licensees may employ unarmed security ~~guards~~ officers as probationary employees for 20 calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security ~~guard~~ officer as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion,

extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.

(b) A security ~~guard~~ officer and patrol company may not employ an unarmed security ~~guard~~ officer in a regular position unless the ~~guard~~ officer has a registration card issued under subsection (d) of this section. A person engaged in a private protective services profession may not employ an armed security ~~guard~~ officer unless the ~~guard~~ officer has a firearm registration permit issued under G.S. 74C-13.

(c) The Director shall be notified in writing of the termination of any regular employee registered under subsection (a) of this section within 10 days after the termination.

(d) An unarmed security ~~guard~~ officer shall make application to the Director for an unarmed registration card which the Director shall issue to ~~said~~ the applicant after receipt of the information required to be submitted by ~~his~~ the applicant's employer pursuant to subsection (a), and after meeting any additional requirements which the Board, in its discretion, deems to be necessary. The unarmed security ~~guard~~ officer registration card shall be in the form of a pocket card designed by the Board, shall be issued in the name of the applicant, and may have the applicant's photograph affixed thereto. The unarmed security ~~guard~~ officer registration card shall expire one year after its date of issuance and shall be renewed every year. The Board may require all registration holders to complete continuing education courses approved by the Board before renewal of their registrations. If an unarmed registered security ~~guard~~ officer is terminated by a licensee and changes employment to another security ~~guard~~ officer and patrol company, the security ~~guard's~~ officer's registration card shall remain valid, provided the security ~~guard~~ officer pays the unarmed ~~guard~~ officer registration transfer fee to the Board and a new unarmed security ~~guard~~ officer registration card is issued. An unarmed security ~~guard~~ officer whose transfer registration application and transfer fee have been sent to the Board may work with a copy of the transfer application until the registration card is issued.

(e) Notwithstanding the provisions of this section, a licensee may employ a person properly registered or licensed as an unarmed security ~~guard~~ officer in another state for a period not to exceed 10 days in any given month; provided the licensee, prior to employing the unarmed security ~~guard,~~ officer, submits to the Director the name, address, and social security number of the unarmed ~~guard~~ officer and the name of the

state of current registration or licensing, and the Director approves the employment of the unarmed ~~guard~~ officer in this State.

(f) Repealed by Session Laws 2005-211, s. 1, effective July 20, 2005."

SECTION 5. G.S. 74C-12 reads as rewritten:

"**§ 74C-12. Denial, suspension, or revocation of license, registration, or ~~permit.~~permit; duty to report criminal arrests.**

(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit;

(2) Violated any provision of this Chapter;

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this Chapter;

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state;

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter;

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) Knowingly made any false report to the employer or client for whom information is being obtained;

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping;

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding;

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding;

(14) Failed to make the required contribution to the Private Protective Services Recovery Fund or failed to maintain the certificate of liability insurance required by this Chapter;

(15) Violated the firearm provisions set forth in this Chapter;

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter;

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent;

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271;

(20) Failed or refused to offer a report to a client within 30 days of the client's written ~~request;~~request after the client has paid for services rendered;

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause;

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter;

(23) Divulged to any person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or ~~his~~ district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client;

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority;

(25) Intemperate habits or lacks good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision;

(26) Advertised or solicited business using a name other than that in which the license was issued;

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a ~~private detective or private investigator~~law enforcement officer while licensed under the provisions of this Chapter as a private ~~investigator.~~investigator;

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board.

(b) The denial, revocation, or suspension of a license, registration, or permit by the Board shall be in writing, be signed by the Director of the Board, and state the grounds upon which the Board decision is based. The aggrieved person shall have the

right to appeal from this decision as provided in Chapter 150B of the General Statutes. The aggrieved person shall file the appeal within 60 days of receipt of the Board's decision.

(c) The following persons may not be issued a license, registration, or permit under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes.

(d) A licensee shall report to the Board in writing within 30 days any charge, arrest for, or conviction of a misdemeanor or felony for any of the following:

(1) Crimes that have as an essential element dishonesty, deceit, fraud, or misrepresentation.

(2) Illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage.

(3) Illegal use, carrying, or possession of a firearm.

(4) Acts involving assault.

(5) Acts involving unlawful breaking or entering, burglary, or larceny.

(6) Any offense involving moral turpitude.

For purposes of this section, the term 'conviction' includes the entry of a plea of guilty, a plea of nolo contendere, or a finding of guilt by a court of competent jurisdiction. The licensee's failure to report a charge, arrest for, or conviction of a misdemeanor or felony is grounds for revocation of the license."

SECTION 6. G.S. 74C-13 reads as rewritten:

"**§ 74C-13. Armed ~~security guard~~licensee or registered employee required to have firearm registration permit; ~~security guard~~firearms training.**

(a) It shall be unlawful for any person performing ~~the duties of an armed security guard~~private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications as set forth in this section and having been issued a firearm registration permit by the Board. For the purposes of this section, the following terms are defined:

(1) 'Armed private investigator' means a licensed private investigator who, at any time, wears, carries, or possesses a firearm in the performance of duty.

~~(1)~~(1a) "Armed security ~~guard~~"officer' means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of an armed security watchman; armed armored car service ~~guard;~~officer; armed alarm system company responder; ~~private detective;~~ or armed courier service ~~guard~~ officer who at any time wears, carries, or possesses a firearm in the performance of duty.

(2) "Contract security company" means any person, firm, association, or corporation engaging in a private protective services profession that provides services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(3) "Proprietary security organization" means any person, firm, association, or corporation or department thereof which employs security ~~guards,~~officers, alarm responders, armored car personnel, or couriers who are employed regularly and exclusively as an employee by an employer in connection with the business affairs of ~~such~~ the employer.

(b) It shall be unlawful for any person, firm, association, or corporation and its agents and employees to employ an armed security ~~guard~~ officer or an armed private investigator and knowingly authorize or permit ~~him~~ the armed security officer or armed private investigator to carry a firearm during the course of performing his or her duties as an armed security ~~guard~~ officer or an armed private investigator if the Board has not issued him or her a firearm registration permit under this section or if the person, firm, association, or corporation permits an armed security ~~guard~~ officer or an armed private investigator to carry a firearm during the course of performing his or her duties whose firearm registration permit has been suspended, revoked, or has otherwise expired:

(1) ~~An armed security guard~~ A firearm registration permit grants authority to the armed security ~~guard,~~officer or armed private investigator, while in the performance of his or her duties or traveling directly to and from work, to carry ~~a standard .38 caliber or .32 caliber revolver or any other~~any firearm approved by the Board and not otherwise prohibited by law. The use of any firearm not approved by the Board is prohibited.

(2) All firearms carried by authorized armed security ~~guards~~ officers in the performance of their duties shall be owned or leased by the employer. Personally owned firearms shall not be carried by an armed security ~~guard~~ officer in the performance of his or her duties.

(c) The applicant for ~~an armed security guard~~a firearm registration permit shall submit an application to the Board on a form provided by the Board.

(d) Each ~~armed security guard~~ firearm registration permit issued under this section to an armed security officer shall be in the form of a pocket card designed by the Board and shall identify the contract security company or proprietary security organization by whom the holder of the firearm registration permit is employed. ~~An armed security guard~~A firearm registration permit issued to an armed security officer expires one year after the date of its issuance and must be renewed annually unless the permit holder's employment terminates before the expiration of the permit. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(d1) Each firearm registration permit issued under this section to an armed private investigator shall be in the form of a pocket card designed by the Board and shall identify the name of the armed private investigator. A private investigator firearm registration permit expires one year from the date of issuance and shall be renewed annually. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(e) If ~~the holder of~~ an armed security ~~guard firearm registration permit~~officer terminates his or her employment with the contract security company or proprietary security organization, the firearm registration permit expires and must be returned to the Board within 15 working days of the date of termination of the employee.

(f) A contract security company or proprietary security organization shall be allowed to employ an individual for 30 days as an armed security ~~guard~~ officer pending completion of the firearms training required by this Chapter, if the contract security company or proprietary security organization obtains prior approval from the Director. The Board and the Attorney General shall provide by rule the procedure by which an armed private investigator, a contract security ~~company~~ company, or a proprietary security organization applicant may be issued a temporary firearm registration permit by the Director of the Board pending a determination by the Board of whether to grant or deny an applicant a firearm registration permit.

(g) The Board may suspend, revoke, or deny ~~an armed security guard~~a firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this section or rules promulgated by the Board to implement this section. The Director may summarily suspend ~~an armed security guard~~a firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against the holder of the permit.

(h) The Board and the Attorney General shall establish a firearms training program for ~~armed security guards~~licensees and registered employees to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General may approve training programs conducted by a contract security company and the security department of a proprietary security organization, if the contract security company or security department of a proprietary security organization offers the courses listed in subdivision (1) of this subsection and if the instructors of the training program are certified trainers approved by the Board and the Attorney General:

(1) The basic training course approved by the Board and the Attorney General shall consist of a minimum of four hours of classroom training which shall include:

a. Legal limitations on the use of hand guns and on the powers and authority of an armed security ~~guard,~~officer;

b. Familiarity with this ~~section,~~section;

c. Range firing and procedure and hand gun safety and ~~maintenance,~~maintenance; and

d. Any other topics of armed security ~~guard~~ officer training curriculum which the Board deems necessary.

(2) An applicant for ~~an armed security guard~~a firearm registration permit must fire a minimum qualifying score to be determined by the Board and the Attorney General on any approved target course approved by the Board and the Attorney General.

(3) ~~An armed security guard~~A firearms registrant must complete a refresher course and shall requalify on the prescribed target course prior to the renewal of his or her firearm registration permit.

(4) The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this section.

(i) The Board may not issue ~~an armed security guard~~a firearm registration permit to an applicant until the applicant's employer submits evidence satisfactory to the Board that the applicant:

(1) Has satisfactorily completed an approved training course.

(2) Meets all the qualifications established by this section and by the rules promulgated to implement this section.

(3) Is mentally and physically capable of handling a firearm within the guidelines set forth by the Board and the Attorney General.

(j) The Board and the Attorney General are authorized to prescribe reasonable rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued ~~an armed security guard~~a firearm registration permit by the Board.

(k) All fees collected pursuant to G.S. 74C-9(e)(7) and (8) shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering the firearms provisions of this Chapter.

(l) The Board and the Attorney General shall establish a training program for certified trainers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board or the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(1) The Board and the Attorney General shall also establish renewal requirements for certified trainers. The Board may require all certified trainers to complete continuing education courses approved by the Board before renewal of their certifications.

(2) No certified firearms trainer shall certify ~~an armed security guard~~a licensee or registrant unless the ~~armed security guard~~licensee or registrant has successfully completed the firearms training requirements set out above in subsection (h) of this section.

(m) The Board and the Attorney General shall establish a training program for unarmed security ~~guards~~ officers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(n) A private investigator shall be permitted to carry a concealed weapon during the performance of his or her duties as a private investigator upon: (i) obtaining a concealed weapon permit issued pursuant to G.S. 14-415.11; (ii) successfully completing the firearms training course approved by the Board and the Attorney General; and (iii) having a notation affixed to the face of the firearms registration card designating that the armed private investigator is allowed to carry a concealed weapon.

A private investigator who does not carry a weapon during the course of his or her duties as a private investigator but who wishes to carry a concealed weapon while not engaged in private investigative duties shall be permitted to do so upon completion of the requirements set forth in Article 54B of Chapter 14 of the General Statutes."

SECTION 7. G.S. 74C-14 reads as rewritten:

"**§ 74C-14. Mace.**

It shall be lawful for security ~~guards~~ officers registered pursuant to the provisions of this Chapter to possess and use tear gas (mace) to the extent allowed under the provisions of G.S. 14-401.6."

SECTION 8. G.S. 74C-21 reads as rewritten:

"**§ 74C-21. Law enforcement officer provisions.**

(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security ~~guard~~ officer and patrol licensee under this Chapter.

(b) An off-duty law enforcement officer may be employed during his or her off-duty hours by a licensed security ~~guard~~ officer and patrol company on an employer-employee basis. An off-duty law enforcement officer shall not wear his or her police officer's uniform or use the police equipment while working for a security ~~guard~~ officer and patrol company.

(c) A law enforcement officer may provide security ~~guard~~ officer and patrol services on an individual employer-employee basis to a person, firm, association, or corporation that is not engaged in a security ~~guard~~ officer and patrol profession."

SECTION 9. Article 1 of Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-22. Continuing education.**

The Board may require individuals holding a license, registration, certificate, or permit to complete continuing education courses approved by the Board before renewal. The Board shall establish, by rule, the number of hours of continuing education necessary for renewal and any other requirements for completion of continuing education courses. The Board shall have the authority to approve continuing education courses and shall consider the continuing education course criteria, including the course curriculum, the qualifications of the instructor, the potential benefit to the industry, and any other criteria the Board deems appropriate."

SECTION 10. G.S. 74C-30 reads as rewritten:

"**§ 74C-30. Private Protective Services Recovery Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services Recovery Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. Said Fund shall be used in the manner provided in this Article for the payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.

(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the

repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

~~(1) On July 1, 1983, the Board shall charge every licensee and trainee possessing a license or trainee permit on that date a fee of fifty dollars ($50.00);~~

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars ($100,000);~~twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to ~~one hundred thousand dollars ($100,000).~~twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from ~~such~~ the investments shall be deposited to the credit of the Fund. The Board in its discretion, may use any and all of the proceeds from ~~such~~ the investments or funds that exceed twenty-five thousand dollars ($25,000) for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the industry;

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees and trainees; and

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: 'The course is being given in whole or in part by a grant from the Private Protective Services Board.'

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 11. G.S. 74C-31(d) reads as rewritten:

"(d) Until ~~such time as~~ the Fund reaches ~~one hundred thousand dollars ($100,000)~~twenty-five thousand dollars ($25,000), or at any time the Fund has insufficient assets in excess of ~~one hundred thousand dollars ($100,000)~~twenty-five thousand dollars ($25,000) to pay outstanding claims, the State Treasurer shall not disburse any payments to an aggrieved party. However, any party aggrieved and awarded payment as ordered by the Board which order is dated after July 1, 1983, shall hold a vested right for payment plus interest as provided in G.S. 24-1 once the Fund reaches a sufficient level for payments. Authorized payments which cannot be made due to the lack of funds will be paid as funds become available, beginning with those payments which have been unsatisfied for the longest period of time."

SECTION 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1019

Short Title:	Investigations of Corporations/Partnerships.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DOMESTIC CORPORATIONS, LIMITED LIABILITY COMPANIES, AND LIMITED PARTNERSHIPS TO MAINTAIN THE NAME OF THE INDIVIDUAL WHO IS THE CUSTODIAN OF RECORD; AND TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO SERVE INTERROGATORIES ON LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-16-22(a3) reads as rewritten:

"(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The Secretary of State shall prescribe the form needed to file an annual report electronically and shall provide this form by electronic means. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names, titles, and business addresses of its principal officers.

(4a) Repealed by Session Laws 1997-475, s. 6.1, effective January 1, 1998.

(5) A brief description of the nature of its business.

(6) For domestic corporations, the name of the individual who is the custodian of the corporate records governed by Part 1 of this Article and the address within this State where those records are located.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.~~"

SECTION 2. G.S. 57C-2-23(a) reads as rewritten:

"(a) Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names and business addresses of its managers or, if the limited liability company has never had members, its organizers.

(5) A brief description of the nature of its business.

(6) For domestic limited liability companies, the name of the individual who is the custodian of the information and records that are required to be kept and maintained pursuant to G.S. 57C-3-04 and the address within this State where those records are located.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.~~ The Secretary of State shall make available the form required to file an annual report."

SECTION 3. G.S. 59-84.4(a) reads as rewritten:

"(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

(5) The fiscal year end of the partnership.

(6) For registered limited liability partnerships, the name of the individual who is the custodian of the partnership books that are required to be kept in accordance with G.S. 59-49 and the address within this State where those records are located.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection.~~ The Secretary of State shall make available the form required to file an annual report."

SECTION 4. Article 3B of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-84.5. Interrogatories by Secretary of State.**

The Secretary of State may prepare and serve written interrogatories on (i) any registered limited liability partnership that the Secretary has reason to believe is subject to the provisions of this Chapter, (ii) any foreign limited liability partnership that the Secretary has reason to believe is subject to the provisions of this Chapter, or (iii) any partner of a registered limited liability partnership or any foreign limited liability partnership that the Secretary has reason to believe is subject to the provisions of this Chapter. The purpose of the interrogatories shall be to enable the Secretary to determine whether the partnership is subject to this Chapter and, if so, has complied with all of the applicable provisions of this Chapter. Subject to applicable jurisdictional requirements, the interrogatories shall be answered within 30 days after the interrogatories are mailed or within an additional time fixed by the Secretary. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, the interrogatories shall be answered by that individual. If the interrogatories are directed to a registered limited liability partnership or a foreign limited liability partnership, the interrogatories shall be answered by a partner on behalf of the partnership. The Secretary of State shall certify to the Attorney General all interrogatories, including the answers to the interrogatories, which disclose a violation of this Chapter for appropriate action by the Attorney General."

SECTION 5. G.S. 59-210(g) reads as rewritten:

"(g) A limited liability limited partnership shall be subject to the provisions of G.S. 59-84.4 and G.S. 59-84.5 as if it were a registered limited liability partnership."

SECTION 6. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1023

Short Title:	Local SPA Employee Status/Appeals.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT RELATING TO THE STATUS OF LOCAL ENTITY EMPLOYEES SUBJECT TO THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-1.1 reads as rewritten:

"**§ 126-1.1. Career State employee defined.**

For the purposes of this Chapter, unless the context clearly indicates otherwise, "career State employee" means a State employee or an employee of a local entity who is covered by this Chapter pursuant to G.S. 126-5(a)(2) who:

(1) Is in a permanent position appointment; and

(2) Has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate 24 preceding months."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1023
PROPOSED COMMITTEE SUBSTITUTE S1023-CSRI-11 [v.1]

5/12/2007 4:49:11 PM

Short Title: Local SPA Employee Status/Appeals. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT RELATING TO THE STATUS OF LOCAL ENTITY EMPLOYEES SUBJECT TO THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-1.1 reads as rewritten:

"**§ 126-1.1. Career State employee defined.**

For the purposes of this Chapter, unless the context clearly indicates otherwise, "career State employee" means a State employee or an employee of a local entity who is covered by this Chapter pursuant to G.S. 126-5(a)(2) who:

(1) Is in a permanent position appointment; and

(2) Has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the State Personnel Act for the immediate 24 preceding months."

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

SENATE BILL 1023:
Local SPA Employee Status/Appeals

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 11, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S1023-CSRI-11 [v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 1023 would amend the statute defining "career State employee" under the State Personnel Act (Act) to include employees of certain local entities, and subject those local employees to the requirements that they (1) be employed in a permanent position appointment, and (2) be continuously employed in a position subject to the State Personnel Act for the immediate 24 preceding months, in order for those employees to receive coverage under the Act.***

[As introduced, this bill was identical to H951, as introduced by Reps. Allen, Holliman, Wilkins, Alexander, which is currently in House Appropriations.]

CURRENT LAW: G.S. 126-1.1 defines a "career State employee" as a State employee who (i) is in a permanent position appointment; and (2) has been continuously employed by the State in a position subject to the State Personnel Act for the immediate 24 preceding months.

G.S. 126-5(a)(2) provides that the provisions of Chapter 126 (State Personnel System) apply to employees of the following local entities:

- area mental health, developmental disabilities, and substance abuse authorities;
- local social services departments;
- county health departments and district health departments;
- local emergency management agencies that receive federal grant-in-aid funds.

Employees who are subject to the State Personnel Act (Chapter 126) cannot be discharged, suspended, or demoted for disciplinary reasons, except for just cause (G.S. 126-35). The Act provides that covered employees may file a contested case to appeal personnel decisions (G.S. 126-34.1).

BACKGROUND: In a recent case involving termination of a county social service department employee, the county argued that in order for the contested case provisions of G.S. 126-34.1 to apply to a local employee, that employee must meet the same 24-month employment requirement that a career State employee must meet. As the terminated employee in question had not been employed in the position for 24 months, the county argued that the employee was not entitled to file a contested case alleging a lack of just cause for the termination. The North Carolina Court of Appeals held that the 24-month employment requirement applicable to a "career State employee" under the Act did not apply to an employee of a local entity covered by the Act, stating: *"In the absence of any indication of a contrary intent by the General Assembly and in light of the language of the statute, the applicable administrative regulations, and this Court's prior decisions, we are compelled to reject DSS' request that we apply the substance of N.C. Gen. Stat. § 126-1.1 to local government employees."* (*Early v. Durham DSS*, 616 S.E.2d 553, 561 (August 16, 2005)).

BILL ANALYSIS: The PCS would amend the definition of "career State employee" under the Act to include employees of certain local entities (designated above), and subject those local employees to the requirements that they (1) be employed in a permanent position appointment, and (2) be continuously

employed in a position subject to the State Personnel Act for the immediate 24 preceding months, in order for those employees to receive coverage under the Act.

EFFECTIVE DATE: This PCS would be effective when it becomes law.

S1023e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1432

Short Title:	Challenge to Administrative Subpoena.	(Public)
Sponsors:	Senators Atwater; and Stevens.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR A MEANINGFUL CHALLENGE TO AN ADMINISTRATIVE SUBPOENA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-4(h) reads as rewritten:

"**§ 96-4. Administration.**

...

(h) Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the chairman and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Chapter. Upon a motion, the chairman and any duly authorized representative or member of the Commission may quash a subpoena if, after a hearing, the Commission finds any of the following:

(1) The subpoena requires the production of evidence that does not relate to a matter in issue.

(2) The subpoena fails to describe with sufficient particularity the evidence required to be produced.

(3) The subpoena is subject to being quashed for any other reason sufficient in law."

SECTION 2. G.S. 96-4 is amended by adding a new subsection to read:

"(h1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection (h) of this section shall be heard at least 10 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides."

SECTION 3. G.S. 105-290(d) reads as rewritten:

"**§ 105-290. Appeals to Property Tax Commission.**

...

(d) Witnesses and Documents. – Upon its own motion or upon the request of any party to an appeal, the Property Tax Commission, or any member of the Commission, or any employee of the Department of Revenue so authorized by the Commission shall examine witnesses under oath administered by any member of the Commission or any employee of the Department so authorized by the Commission, and examine the documents of any person if there is ground for believing that information contained in such documents is pertinent to the decision of any appeal pending before the Commission, regardless of whether such person is a party to the proceeding before the Commission. Witnesses and documents examined under the authority of this subsection (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1), below. The travel expenses of any witness subpoenaed and the cost of serving any subpoena shall be borne by the party that requested the subpoena.

(1) The Property Tax Commission, a member of the Commission, or any employee of the Department of Revenue authorized by the Commission, is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Commission directed to the witness or witnesses or to the person or persons having custody of the documents sought. Subpoenas issued under this subdivision may be served by any officer authorized to serve subpoenas.

(2) Any person who shall willfully fail or refuse to appear, to produce subpoenaed documents in response to a subpoena, or to testify as provided in this subsection (d) shall be guilty of a Class 1 misdemeanor.

(3) Upon a motion, the Property Tax Commission, or a member of the Commission may quash a subpoena if, after a hearing, the Commission finds any of the following:

a. The subpoena requires the production of evidence that does not relate to a matter in issue.

b. The subpoena fails to describe with sufficient particularity the evidence required to be produced.

c. The subpoena is subject to being quashed for any other reason sufficient in law."

SECTION 4. G.S. 105-290 is amended by adding a new subsection to read:

"(d1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subdivision (d)(3) of this section shall be heard at least 10 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides."

SECTION 5. G.S. 150B-39(c) reads as rewritten:

"**§ 150B-39. Depositions; discovery; subpoenas.**

...

(c) In preparation for, or in the conduct of, a contested case subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the agency may quash a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. A hearing on a motion to quash a subpoena pursuant to this subsection shall be heard at least 10 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6."

SECTION 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1432

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

S1432-ARI-13 [v.1]

Date May 15 ,2007

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

Senator Atwater

moves to amend the bill on page 2, line 44, through page 3, line18, by deleting those lines, and renumbering the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Principal Clerk ____
Reading Clerk ____

Corrected notice - PLEASE NOTE TIME CHANGE and additional bill

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	May 17, 2007	9:00 to 11:00 am	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 222	Armed Robbery/Apparent Firearms.	Senator Goodall
SB 789	Speeding to Elude Arrest/Aggravating Factors.	Senator Hartsell
SB 1019	Investigations of Corporations/Partnerships.	Senator Hartsell
SB 1282	Wildlife Protectors to Enforce Criminal Laws.	Senator Snow
SB 1285	Bioptic Lenses/Drivers License Tests.	Senator Snow
SB 1286	Entry of Inspectors Onto Private Lands.	Senator Snow
SB 1287	Judicial Department Access to SSN Information.	Senator Snow
SB 1408	Clarify Disciplinary Action/Appraisers Board.	Senator Hartsell
SB 1430	Amend Crim Offenses/Injury to Property.	Senator Atwater

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, May 17, 2007, 9:00 - 11:00 am
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 222	Armed Robbery/Apparent Firearms.	Senator Goodall
SB 789	Speeding to Elude Arrest/Aggravating Factors.	Senator Hartsell
SB 1019	Investigations of Corporations/Partnerships.	Senator Hartsell
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SB 1287	Judicial Department Access to SSN Information.	Senator Snow
SB 1408	Clarify Disciplinary Action/Appraisers Board.	Senator Hartsell
SB 1430	Amend Crim Offenses/Injury to Property.	Senator Atwater

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 17, 2007

Senator Fletcher Hartsell, Chairman, called the S
enate Judiciary II Committee to order on May 17, 2007, with fifteen members present.

Senator Hartsell welcomed pages Sarah Holmes and Kirk Hemingway and thanked them for their service.

SB 1282 (Wildlife Protectors to Enforce Criminal Laws.) Senator Snow was recognized to explain the bill. Senator Allran presented an amendment, and then withdrew it. Mr. Norman Young, Assistant Attorney General with North Carolina Department of Justice gave additional information. Questions from Senators Apodaca, Allran and East were answered by Senator Snow. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB 1285 (Bioptic Lenses/Drivers License Tests.) Senator Snow was recognized to explain the bill. Ms. Sherry Creech, representing North Carolina Department of Motor Vehicles – Medical, spoke in opposition to the bill. Questions from Senators Swindell and Jacumin were answered by Senator Snow. Senator Bingham moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

SB 1286 (Entry of Inspectors Onto Private Lands.) Senator Snow was recognized to explain the bill. Questions from Senators Apodaca and Swindell were answered by Senator Snow. Senator Goodall moved for a favorable report. All voted and the motion carried.

SB 1287 (Judicial Department Access to SNN Information) Senator Jones moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Snow was recognized to explain the bill. Senator Hartsell presented an amendment and moved that it be accepted. All voted and the motion carried. Senator Apodaca moved for a favorable report as amended, unfavorable to the original bill, and rolled into a Committee Substitute. All voted and the motion carried.

SB 1430 (Amend Crim Offenses/Injury to Property.) Senator Hartsell noted that there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion. Senator Jones so moved, all voted and the motion carried. Senator Atwater was recognized to explain the bill. He presented an amendment and asked that it be accepted. Senator Goodall so moved, all voted and the motion carried. Questions from Senators Queen, Bingham, Jones and Goodall were answered by Senator Atwater and

Mr. Ron Moore, District Attorney for Buncombe County. Speaking on the bill were Mr. Tomas Keith, District Attorney for Forsyth County and Attorney John Madler, Associate Director for Policy/Staff Attorney North Carolina Sentencing and Policy Advisory Commission. Senator Allran moved for a favorable report as amended, unfavorable to the original bill with a referral to Appropriations and rolled into a new Committee Substitute. All voted and the motion carried.

SB 222 (Armed Robbery/Apparent Firearms.) Senator Jacumin moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Goodall was recognized to explain the bill. Questions from Senators Queen, Jones and Apodaca were answered by Mr. Ben Popkin, Staff Attorney. Mr. Ron Moore, District Attorney for Buncombe County spoke on the bill. Senator Apodaca presented an amendment and moved that it be adopted. All voted and the motion carried. Senator Apodaca moved for a favorable report as amended, unfavorable to the original bill, and rolled into a new Committee Substitute with a referral to Approporiations. All voted and the motion carried.

SB 789 (Speeding to Elude Arrest/Aggravating Factors.) As this was Senator Hartsell's bill, Senator Allran presided. Senator Bingham moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill. Mr. Ron Moore, District Attorney for Buncombe, spoke on the bill. Questions from Senators Bingham, Kerr, Jones and Dorsett were answered by District Attorney Moore. Senator Bingham moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

SB1019 (Investigations of Corporations/Partnerships.) This was Senator Hartsell's bill and Senator Allran presided. Senator Hartsell explained the bill. Mrs. Haley Haynes, Deputy Secretary of State, was recognized to give additional information. Questions from Senators Kerr, Bingham and Goodall were answered by Mrs. Haynes and Senator Hartsell. Senator Bingham moved for a favorable report, all voted and the motion carried.

SB 1408 (Clarify Disciplinary Action/Appraisers Board.) Senator Berger presided. Senator Goodall moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill. Questions from Senators Goodall and Bingham were answered by Senator Hartsell. Mr. Phillip Humphries, Executive Director of the North Carolina Appraisal Board and Mr. Rick Zechini, representing the North Carolina Association of Realtors spoke on the bill. Senator East moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Thursday, May 17, 2007

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

FAVORABLE

S.B. **1019** Investigations of Corporations/Partnerships.
Sequential Referral: None
Recommended Referral: None

S.B. **1282** Wildlife Protectors to Enforce Criminal Laws.
Sequential Referral: None
Recommended Referral: None

S.B. **1285** Bioptic Lenses/Drivers License Tests.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

S.B. **1286** Entry of Inspectors Onto Private Lands.
Sequential Referral: None
Recommended Referral: None

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

S.B. **132** Protect Children From Sexual Predators Act.
Draft Number: PCS 55475
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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Recommended Referral: None

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Sequential Referral: None
Recommended Referral: None

S.B. **1285** Bioptic Lenses/Drivers License Tests.
Sequential Referral: None
Recommended Referral: None

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Sequential Referral: None
Recommended Referral: None

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NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, May 17, 2007

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

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

S.B. **222** Armed Robbery/Apparent Firearms.

Draft Number:	PCS 75414
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

S.B. **789** Speeding to Elude Arrest/Aggravating Factors.

Draft Number:	PCS 55488
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

S.B. **1287** Judicial Department Access to SSN Information.

Draft Number:	PCS 15090
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1407** Resale of Tickets via Internet.

Draft Number:	PCS 55487
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

S.B. **1408** Clarify Disciplinary Action/Appraisers Board.

Draft Number:	PCS 65256
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1430** Amend Crim Offenses/Injury to Property.

Draft Number:	PCS 75415
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

S.B. **1491** Adjust Penalty/Arson & Larceny.

Draft Number:	PCS 65258
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 7

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5/17/07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Mobs	Times-News, Hendersonville
Nicki Tosco	Sen. Dan Clodfelter
Robert Wilson	SOS
Alex Eaton	Fabian
Laurie Leatherwood	CJL
S Woolson	NCFR
Don McCorquodale	SAS
Patricia Ramey	NCAOC
Kaitha Kubinsky	NCGA
David Farrell	Ward & Smith
Doug Hebron	NC BAR ASSN

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6/17/07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tye Hunter	IDS
Seth Edwards	DA
[illegible]	NMRS
Tom Keith	DA - Forsyth Co 21st Reg
Vivecia Tadlock	DMV - 1100 Newbern Ave
Boyd Causby	City of Charlotte
[illegible]	NCMS
Adam Keith	NCGA Staff
John Madler	NC Sentencing Commission
Patrick Bfffh	Nelson Mullins
[illegible]	NCAOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5/17/07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	NC Conference of DAs
Ron Moore	Dist. Atty 28th
Hadley Haynes	SOS
David Reitzel	NCATC
Rick Zechini	NC Assn. of Realtors
Elisa Wolper	IDS
Penny Hufffin	Daily Bulletin
Sarah Preston	ACLU-NC
Philip Humphries	NC Appraisal Board
Curtis W Young	Staff
Brad Greenway	DA 29A

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5/17/08

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dave Stumpf	CATA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 222

Short Title:	Armed Robbery/Apparent Firearms.	(Public)
Sponsors:	Senators Goodall; Clodfelter, Dannelly, Graham, Jones, Pittenger, and Smith.	
Referred to:	Judiciary II (Criminal).	

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSE OF ROBBERY WITH FIREARMS OR OTHER DANGEROUS WEAPONS TO INCLUDE APPARENT FIREARMS.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line for G.S. 14-87 reads as rewritten:

"**§ 14-87. Robbery with ~~firearms~~ firearms, apparent firearms, or other dangerous weapons.**"

SECTION 2. G.S. 14-87(a) reads as rewritten:

"(a) Any person or persons who, having in possession or with the use or threatened use of any ~~firearms~~ firearm, apparent firearm, or other dangerous weapon, implement or means, whereby ~~the life of a person is endangered or threatened,~~ a reasonable person under the circumstances would believe that his or her life was endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 222
PROPOSED COMMITTEE SUBSTITUTE S222-CSRD-22 [v.3]

5/16/2007 6:32:34 PM

Short Title: Armed Robbery/Apparent Firearms. (Public)

Sponsors:

Referred to:

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ROBBERY WITH AN APPARENT FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line for G.S. 14-87 reads as rewritten:

"**§ 14-87. Robbery with ~~firearms~~ firearms, apparent firearms, or other dangerous weapons.**"

SECTION 2. G.S. 14-87 is amended by adding a new subsection to read:

"(a1) Any person or persons who, having in the person's possession or with the use or threatened use of any replica, article or device which a reasonable person would believe to be a firearm or other deadly weapon, whereby a reasonable person under the circumstances would believe that his or her life was endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class H felony. A second or subsequent violation of this subsection shall be a Class D felony."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 222:
Armed Robbery/Apparent Firearms

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Goodall	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S222-CSRD		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 222 would enact a new subsection of G.S. 14-87, "Robbery with firearms or other dangerous weapon" to create the new offense, "robbery with apparent firearms." The PCS would amend the catch line for G.S. 14-87 to include reference to apparent firearms. The new offense would be a Class H felony for a first offense and a Class D felony for the second and any subsequent offenses.***

[As introduced, this bill was identical to H344, as introduced by Rep. Alexander, which is currently in House Judiciary I.]

CURRENT LAW: G.S. 14-87 "Robbery with firearms or other dangerous weapons" is a class D felony offense consisting of the following essential elements:

A person guilty of this offense:

- Commits or attempts to commit larceny.
- From the person or from the person's presence.
- By the possession, use, or threatened use of a firearm or other dangerous weapon.
- Which endangers or threatens the life of the person.

The presumptive minimum sentence for a Class D felony is 51 – 64 months.

BILL ANALYSIS: The Proposed Committee Substitute to Senate Bill 222 would enact a new subsection of G.S. 14-87, "Robbery with firearms or other dangerous weapon" to create the new offense, "robbery with apparent firearms." The PCS would amend the catch line for G.S. 14-87 to read "Robbery with firearms, apparent firearms, or other dangerous weapons." to include reference to apparent firearms. The new offense would be a class H felony for a first offense and a Class D felony for the second and any subsequent offenses. The offense would consist of the following essential elements:

A person guilty of this offense:

- Commits or attempts to commit larceny.
- From the person or from the person's presence.
- By the possession, use, or threatened use of an apparent firearm ("...any replica, article or device which a reasonable person would believe to be a firearm or other deadly weapon...").
- Which a reasonable person under the circumstances would believe endangers or threatens the person's life.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

S0222e1-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 789

Short Title:	Speeding to Elude Arrest/Aggravating Factors.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE AGGRAVATING FACTOR RELATING TO HAVING A CHILD UNDER THE AGE OF TWELVE IN THE VEHICLE TO HAVING A CHILD UNDER SIXTEEN IN THE VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5(b)(8) reads as rewritten:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

...

(8) Driving with a child under ~~12~~ 16 years of age in the vehicle."

SECTION 2. This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 789
PROPOSED COMMITTEE SUBSTITUTE S789-CSRD-25 [v.1]

5/16/2007 9:45:01 PM

Short Title: Speeding to Elude Arrest/Aggravating Factors. (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE AGGRAVATING FACTOR RELATING TO HAVING A CHILD UNDER THE AGE OF TWELVE IN THE VEHICLE TO HAVING A CHILD UNDER SIXTEEN IN THE VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5(b)(8) reads as rewritten:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

...

(8) Driving with a child under ~~12~~ 16 years of age in the vehicle."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 789:
Speeding to Elude Arrest/Aggravating Factors

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 789 would amend the offense of "Speeding to elude arrest" by raising the age of a child passenger that may be considered to constitute an aggravating factor for the determination of the appropriate offense level for the charge. SB 789 would raise the age of a child to "under 16 years of age" from the current "under 12 years of age".***

CURRENT LAW: G.S. 20-141.5(a) makes it a Class 1 misdemeanor offense for an individual to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer[1]. G.S. 20-141.5(b) makes violation of G.S. 20-141.5(a) a Class H felony if 2 or more of the following aggravating factors are present at the time the speeding to elude arrest occurs occurs[2]:

- Speeding in excess of 15 miles per hour over the legal limit.
- Driving while impaired due to consumption of an impairing substance or a blood alcohol concentration of more than .14.
- Reckless driving.
- Negligent driving leading to an accident causing property damage in excess of $1,000 or personal injury.
- Driving while license is revoked.
- Driving in excess of the posted speed limit during the hours the speed limit is in effect in a school or work zone.
- Passing a stopped school bus.
- Driving with a child under 12 years of age in the vehicle.

G.S. 20-141.5(b1) also makes violation of G.S. 20-141.5(a) a Class H felony if the violation is the proximate cause of the death of a person, and a Class E felony when a violation of G.S. 20-141.5(b) is the proximate cause of the death of a person.

BILL ANALYSIS: Senate Bill 789 would amend the last aggravating factor listed in G.S. 14-87(b) to raise the age of children passengers that would satisfy this factor from "under 12 years of age" to "under 16 years of age".

EFFECTIVE DATE: This act becomes effective October 1, 2007, and applies to offenses committed on or after that date.

S0789e1-SMRD

[1] The presumptive minimum sentence for a Class 1 misdemeanor is 1 – 45 days.
[2] The presumptive minimum sentence for a Class H felony is 5 – 6 months.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1019

Short Title:	Investigations of Corporations/Partnerships.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DOMESTIC CORPORATIONS, LIMITED LIABILITY COMPANIES, AND LIMITED PARTNERSHIPS TO MAINTAIN THE NAME OF THE INDIVIDUAL WHO IS THE CUSTODIAN OF RECORD; AND TO GIVE THE SECRETARY OF STATE THE AUTHORITY TO SERVE INTERROGATORIES ON LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-16-22(a3) reads as rewritten:

"(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The Secretary of State shall prescribe the form needed to file an annual report electronically and shall provide this form by electronic means. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names, titles, and business addresses of its principal officers.

(4a) Repealed by Session Laws 1997-475, s. 6.1, effective January 1, 1998.

(5) A brief description of the nature of its business.

(6) For domestic corporations, the name of the individual who is the custodian of the corporate records governed by Part 1 of this Article and the address within this State where those records are located.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.~~"

SECTION 2. G.S. 57C-2-23(a) reads as rewritten:

"(a) Each domestic limited liability company other than a professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The address and telephone number of its principal office.

(4) The names and business addresses of its managers or, if the limited liability company has never had members, its organizers.

(5) A brief description of the nature of its business.

(6) For domestic limited liability companies, the name of the individual who is the custodian of the information and records that are required to be kept and maintained pursuant to G.S. 57C-3-04 and the address within this State where those records are located.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.~~ The Secretary of State shall make available the form required to file an annual report."

SECTION 3. G.S. 59-84.4(a) reads as rewritten:

"(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

(5) The fiscal year end of the partnership.

(6) For registered limited liability partnerships, the name of the individual who is the custodian of the partnership books that are required to be kept in accordance with G.S. 59-49 and the address within this State where those records are located.

~~If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection.~~ The Secretary of State shall make available the form required to file an annual report."

SECTION 4. Article 3B of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-84.5. Interrogatories by Secretary of State.**

The Secretary of State may prepare and serve written interrogatories on (i) any registered limited liability partnership that the Secretary has reason to believe is subject to the provisions of this Chapter, (ii) any foreign limited liability partnership that the Secretary has reason to believe is subject to the provisions of this Chapter, or (iii) any partner of a registered limited liability partnership or any foreign limited liability partnership that the Secretary has reason to believe is subject to the provisions of this Chapter. The purpose of the interrogatories shall be to enable the Secretary to determine whether the partnership is subject to this Chapter and, if so, has complied with all of the applicable provisions of this Chapter. Subject to applicable jurisdictional requirements, the interrogatories shall be answered within 30 days after the interrogatories are mailed or within an additional time fixed by the Secretary. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, the interrogatories shall be answered by that individual. If the interrogatories are directed to a registered limited liability partnership or a foreign limited liability partnership, the interrogatories shall be answered by a partner on behalf of the partnership. The Secretary of State shall certify to the Attorney General all interrogatories, including the answers to the interrogatories, which disclose a violation of this Chapter for appropriate action by the Attorney General."

SECTION 5. G.S. 59-210(g) reads as rewritten:

"(g) A limited liability limited partnership shall be subject to the provisions of G.S. 59-84.4 and G.S. 59-84.5 as if it were a registered limited liability partnership."

SECTION 6. This act becomes effective October 1, 2007.

SENATE BILL 1019:
Investigations of Corporations/Partnerships

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 17, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 1019 would require that domestic business corporations, limited liability companies, and limited partnerships annually report the name of the person who is the custodian of that business entity's records. It would also allow the Secretary of State to serve interrogatories on a registered limited liability partnership, a foreign limited liability partnership, and a limited liability limited partnership.***

CURRENT LAW: Corporations that are formed under the laws of North Carolina, limited liability companies (LLCs), limited liability partnerships (LLPs), and limited liability limited partnerships must file annual reports with the Secretary of State. In general, these reports must provide information regarding the business entity's name, the address of the registered office, the name and address of registered agent, the address and telephone number of the principal office, the names and addresses of the principal officers or partners, and a brief description of the nature of the business. These reports must be filed annually. However, if the information in the report has not changed from the previous year, the business entity may file a certificate to that effect and is not required to set out the individual information.

BILL ANALYSIS:

Sections 1-3 would change the laws regarding domestic business corporations, LLCs, LLPs, and foreign and domestic limited liability limited partnerships, and domestic and foreign limited liability partnerships, and domestic registered limited liability partnerships as follows:

- Each would have to disclose in its annual report to the Secretary of State the name of the individual who is the custodian of the information and records that are required by law to be kept.
- The address of the individual who is required to keep the specified records...
- Require that the complete annual report be filed each year. Previously, if there had been no change in the information contained in the previous year's annual report, the business entity was allowed to file a certificate to that effect.

Sections 4 and 5 give the Secretary of State the authority to serve interrogatories on any registered limited liability partnership, foreign limited liability partnership, limited liability limited partnership, or any partner of these partnerships. The purpose of the interrogatories would be to enable the Secretary to determine whether the partnership is subject to the Chapter 59 of the General Statutes, and if so, whether the partnership has complied with that Chapter. The Secretary of State would provide the Attorney General with any interrogatories and the answers to the interrogatories if they disclose a violation of the Chapter.

EFFECTIVE DATE: The act would become effective October 1, 2007.

S1019e1-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1282

Short Title:	Wildlife Protectors to Enforce Criminal Laws.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF WILDLIFE PROTECTORS TO ENFORCE CRIMINAL LAWS NOT OTHERWISE WITHIN THEIR JURISDICTION WHILE ON DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-136(d1)(1) reads as rewritten:

"(d1) In addition to law enforcement authority granted elsewhere, a protector has the authority to enforce criminal laws under the following circumstances:

(1) When the protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the protector is <u>on duty or</u> engaged in the enforcement of laws otherwise within his jurisdiction; or

...."

SECTION 2. This act becomes effective October 1, 2007.

SENATE BILL 1282:
Wildlife Protectors to Enforce Criminal Laws

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Snow	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***The bill would authorize wildlife protectors to enforce criminal laws not otherwise within their jurisdiction while the protector is on duty.***

CURRENT LAW: A protector is defined as "[a]n employee of the North Carolina Wildlife Resources Commission sworn in as an officer and assigned to duties which include exercise of law-enforcement powers."

G.S. 113-136 currently grants inspectors and protectors the powers of peace officers anywhere in the State to enforce all matters within their respective subject-matter jurisdictions, subject to the provisions of the statute. The statute goes on to provide that in addition to law enforcement authority granted elsewhere, a protector has authority to enforce criminal laws if the protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the protector is engaged in the enforcement of laws otherwise within his jurisdiction.

BILL ANALYSIS: The bill would authorize a protector to enforce criminal laws not otherwise within their jurisdiction while the protector is on duty, if the protector has probable cause to believe that a person committed a criminal offense in the protector's presence.

EFFECTIVE DATE: This bill would be effective when it becomes law.

S1282e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1285

Short Title:	Bioptic Lenses/Drivers License Tests.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF BIOPTIC LENSES WHEN TESTING FOR A DRIVERS LICENSE AND THE ISSUANCE OF A RESTRICTED LICENSE TO AN INDIVIDUAL THAT PASSES CERTAIN REQUIREMENTS AFTER PASSING THE DRIVERS LICENSE EYE TEST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7 is amended by adding a new subsection to read:

"(t) Use of Bioptic Telescopic Lenses. – An applicant using bioptic telescopic lenses shall be eligible for a regular drivers license under this section if the applicant meets all of the following:

(1) Demonstrates a visual acuity of at least 20/200 in one or both eyes and a field of 70 degrees horizontal vision with or without corrective carrier lenses, or if the person has vision in one eye only, the person demonstrates a field of at least 40 degrees temporal and 30 degrees nasal horizontal vision.

(2) Demonstrates a visual acuity of at least 20/70 in one or both eyes with the bioptic telescopic lenses and without the use of field expanders.

(3) Provides a report of examination by an ophthalmologist or optometrist on a form prescribed by the Division for the Division to determine if all field of vision requirements are met or additional testing is needed.

(4) Meets all other criteria for licensure.

Applicants using bioptic telescopic lenses shall be eligible for a limited learner's permit or provisional drivers license issued pursuant to G.S. 20-11, provided the requirements of this subsection are met and any other required testing or documentation is completed and submitted with the application.

Applicants issued a regular drivers license, limited learner's permit, or provisional drivers license, after using bioptic telescopic lenses for the eye test, shall be subject to the following restrictions on the license issued:

(1) The license or permit holder shall not be eligible for any endorsements.

(2) The license or permit shall permit the operation of motor vehicles only during the period beginning one-half hour after sunrise and ending one-half hour before sunset.

Applicants issued a regular drivers license, after using bioptic telescopic lenses for the eye test, may drive motor vehicles between the period beginning one-half hour before sunset and ending one-half hour after sunrise if the applicant:

(1) Demonstrates a visual acuity of at least 20/40 in one or both eyes with the bioptic telescopic lenses and without the use of field expanders;

(2) Has been licensed under this section for at least one year; and

(3) Passes a skills test taken at night.

Nothing in this subsection shall require the Division to issue licenses or permits applied for, pursuant to the requirements of this section, at any location other than the Division's Headquarters office in Raleigh. The Division may select additional offices throughout the State as sites for testing allowed pursuant to this subsection."

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

SENATE BILL 1285:
Bioptic Lenses/Drivers License Tests

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Snow	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1285 would allow the use of bioptic lenses when testing for a drivers license and the issuance of a restricted license to an individual that passes certain requirements after passing the drivers license eye test.

BACKGROUND: A bioptic telescopic lens is a spectacle-mounted device that magnifies distant objects. The device allows users to alternate between the magnified narrow field of view and the unmagnified wide view by tilting their heads, like traditional bifocal lenses. Bioptic lenses are used by people with eye conditions or diseases that reduce resolution of sight, including cataracts, macular degeneration, and corneal diseases. According to a recent press report, at least 35 states now issue restricted driver's licenses to people who use bioptic lenses.

CURRENT LAW: G.S. 20-7, concerning issuance and renewal of drivers licenses, provides that in order to demonstrate physical and mental ability, a person must pass an examination that may include road tests, vision tests, oral tests, and, in the case of literate applicants, written tests, as the Division may require.

BILL ANALYSIS: The bill would provide that a person using bioptic telescopic lenses is eligible for a regular drivers license, limited learner's permit, or provisional drivers license if the applicant

- demonstrates a visual acuity of at least 20/200 in one or both eyes and a field of 70 degrees horizontal vision with or without corrective carrier lenses, or if the person has vision in one eye only, the person demonstrates a field of at least 40 degrees temporal and 30 degrees nasal horizontal vision.
- demonstrates a visual acuity of at least 20/70 in one or both eyes with the bioptic telescopic lenses and without the use of field expanders.
- provides a report of examination by an ophthalmologist or optometrist on a form prescribed by the Division for the Division to determine if all field of vision requirements are met or additional testing is needed.
- meets all other criteria for licensure.

Applicants issued a regular drivers license, limited learner's permit, or provisional drivers license, after using bioptic telescopic lenses for the eye test, would (i) not be eligible for any endorsements; and (ii) only be permitted to operate a motor vehicle during the period beginning one-half hour after sunrise and ending one-half hour before sunset (during the day).

Applicants issued a regular drivers license after using bioptic telescopic lenses for the eye test could only drive a motor vehicles between the period beginning one-half hour before sunset and ending one-half hour after sunrise (after dark) if the applicant: (i) demonstrates a visual acuity of at least 20/40 in one or both eyes with the bioptic telescopic lenses and without the use of field expanders; (ii) has been licensed under this section for at least one year; and (iii) passes a skills test taken at night.

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

S1285e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1286

Short Title:	Entry of Inspectors Onto Private Lands.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF MARINE FISHERIES INSPECTORS AND WILDLIFE PROTECTORS TO ENTER PRIVATE LANDS TO ENFORCE LAWS UNDER THEIR JURISDICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-136 is amended by adding a new subsection to read:

"(m) Within the limitations of this section, inspectors and protectors may enter private lands for the purpose of enforcing laws within their respective jurisdictions and shall not be subject to liability for civil or criminal trespass for such entry."

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

SENATE BILL 1286:
Entry of Inspectors Onto Private Lands

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Snow	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1286 would provide that, subject to limitations in the current statute, Marine Fisheries Inspectors (inspectors) and Wildlife Protectors (protectors) may enter private lands to enforce laws under their jurisdictions, and provide that they would not be subject to liability for civil or criminal trespass for such entry.***

CURRENT LAW:

A protector is defined as "[a]n employee of the North Carolina Wildlife Resources Commission sworn in as an officer and assigned to duties which include exercise of law-enforcement powers."

An inspector is defined as "[a]n employee of the Department [of Environment and Natural Resources], other than a wildlife protector, sworn in as an officer and assigned duties which include exercise of law enforcement powers under this Subchapter [Article 12 of Chapter 113 of the General Statutes]...".

G.S. 113-136 currently grants inspectors and protectors the powers of peace officers anywhere in the State to enforce all matters within their respective subject-matter jurisdictions, subject to the provisions of the statute. With respect to searches, the statute provides "[n]othing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures." Curtilage is generally the area immediately surrounding a home and intimately tied to the home itself; for example, the area that includes buildings like an unattached garage, a storage shed, and similar structures, if they are relatively close to the dwelling and serve the homeowner's daily needs. With respect to searches of private land, North Carolina courts have held that the constitutional guaranties of freedom from unreasonable search and seizure [provided under the Fourth Amendment], applicable to one's home, refer to the dwelling and other buildings within the curtilage but do not apply to open fields, orchards, or other lands not an immediate part of the dwelling site. (*State v. Harrison*, 80 S.E.2d 481 (1954).

BILL ANALYSIS: The bill would provide that, subject to limitations in the current statute, inspectors and protectors may enter private lands to enforce laws under their jurisdictions, and provide that they would not be subject to liability for civil or criminal trespass for such entry.

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

S1286e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1287

Short Title:	Judicial Department Access to SSN Information.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE JUDICIAL DEPARTMENT IS A BRANCH OF GOVERNMENT THAT MAY HAVE ACCESS TO SOCIAL SECURITY INFORMATION SUBMITTED AS PART OF AN APPLICATION FOR A DRIVERS LICENSE AND KEPT ON FILE AT THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the drivers license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered."

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

SENATE BILL 1287:
Judicial Department Access to SSN Information

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Snow	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1287 would authorize the Division of Motor Vehicles (DMV) to disclose the social security number of an applicant for a drivers license to the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

CURRENT LAW: Under G.S. 20-7, applicants for drivers licenses must provide a valid social security number. The statute provides that the SSN is not a public record, but allows the DMV to disclose the SSN in accordance with applicable federal law to (i) administer drivers license laws; (ii) the Department of Health and Human Services, Child Support Enforcement Program, for the purpose of establishing patterning or child support or enforcing a child support order; and (iii) the Department of Revenue for the purpose of verifying taxpayer identity.

BILL ANALYSIS: The bill would authorize DMV to disclose the SSN's of applicants to the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

EFFECTIVE DATE: The PCS would be effective when it becomes law.

S1287e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1287
PROPOSED COMMITTEE SUBSTITUTE S1287-CSRI-15 [v.1]

5/16/2007 11:36:14 AM

Short Title: Judicial Department Access to SSN Information. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE JUDICIAL DEPARTMENT IS A BRANCH OF GOVERNMENT THAT MAY HAVE ACCESS TO SOCIAL SECURITY INFORMATION SUBMITTED AS PART OF AN APPLICATION FOR A DRIVERS LICENSE AND KEPT ON FILE AT THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the drivers license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

(5) To local health departments for the purpose of verifying the identity of an individual in order to determine the individual's financial eligibility for services."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1287

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

S1287-ARI-15 [v.1]

Date May 17, 2007 ,2007

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

Senator Hartsell

moves to amend the bill on page 1, lines 2 through 3 by rewriting those lines to read:
"AN ACT TO PROVIDE THAT THE OFFICE OF INDIGENT DEFENSE SERVICES OF THE JUDICIAL DEPARTMENT AND LOCAL HEALTH DEPARTMENTS MAY HAVE ACCESS TO SOCIAL SECURITY";

and on page 1, lines 24 and 25, by inserting between those lines:
"(5) To local health departments for the purpose of verifying the identity of an individual in order to determine the individual's financial eligibility for services.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1408

Short Title:	Clarify Disciplinary Action/Appraisers Board.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DISCIPLINARY AUTHORITY OF THE NORTH CAROLINA APPRAISAL BOARD UNDER THE NORTH CAROLINA APPRAISERS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93E-1-12(a) reads as rewritten:

"(a) The Board may take disciplinary action against registered trainees and State-licensed or State-certified real estate appraisers. Upon its own motion or the complaint of any person, the Board may investigate the actions of any person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter, any person who performs appraisals without an appropriate registration, license, or certificate, or any person who holds himself or herself out to be registered as a trainee or licensed or certified as a real estate appraiser when the person holds no registration, license, or certificate. However, the Board shall not investigate, whether upon its own motion or the complaint of any person, any testimony in court or to an administrative agency of any person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter. Under no circumstances shall the Board investigate any person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter upon an anonymous complaint. If the Board finds probable cause to believe that a person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter has violated any of the provisions of this Chapter, the Board may hold a hearing on the allegations of misconduct.

The Board may suspend or revoke the registration, license, or certificate granted to any person under the provisions of this Chapter or reprimand any registered trainee, licensee, or certificate holder if, following a hearing or by consent, the Board finds the registered trainee, licensee, or certificate holder to have:

(1) Procured registration, licensure, or certification pursuant to this Chapter by making a false or fraudulent representation;

(2) Made any willful or negligent misrepresentation or any willful or negligent omission of material fact;
(3) Accepted an appraisal assignment when the employment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or when the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon consequences resulting from the appraisal assignment;
(4) Acted or held himself or herself out as a registered trainee or a State-licensed or State-certified real estate appraiser when not so registered, licensed, or certified;
(5) Failed as a State-licensed or State-certified real estate appraiser to actively and personally supervise any person not licensed or certified under this Chapter who assists the State-licensed or State-certified real estate appraiser in performing real estate appraisals;
(6) Failed to make available to the Board for its inspection without prior notice, originals or true copies of all written contracts engaging the person's services to appraise real property, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports;
(7) Paid a fee or valuable consideration to any person for acts or services performed in violation of this Chapter;
(8) Acted as a real estate appraiser in an unworthy or incompetent manner as to endanger the interest of the public;
(9) Violated any of the standards of practice for real estate appraisers or any other rule promulgated by the Board;
(10) Performed any other act which constitutes improper, fraudulent, or other dishonest conduct; or
(11) Violated any of the provisions of this Chapter.

The Executive Director of the Board shall transmit a certified copy of all final orders of the Board suspending or revoking registrations, licenses, or certificates issued under this Chapter to the clerk of superior court of the county in which the licensee or certificate holder maintains the person's principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1408
PROPOSED COMMITTEE SUBSTITUTE S1408-CSRC-38 [v.3]

5/17/2007 8:16:58 AM

Short Title: Clarify Disciplinary Action/Appraisers Board. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DISCIPLINARY AUTHORITY OF THE NORTH CAROLINA APPRAISAL BOARD UNDER THE NORTH CAROLINA APPRAISERS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93E-1-12(a) reads as rewritten:

"(a) The Board may take disciplinary action against registered trainees and State-licensed or State-certified real estate appraisers. Upon its own motion or the complaint of any person, the Board may investigate the actions of any person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter, any person who performs appraisals without an appropriate registration, license, or certificate, or any person who holds himself or herself out to be registered as a trainee or licensed or certified as a real estate appraiser when the person holds no registration, license, or certificate. Under no circumstances shall the Board investigate any person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter upon an anonymous complaint. If the Board finds probable cause to believe that a person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter has violated any of the provisions of this Chapter, the Board may hold a hearing on the allegations of misconduct.

The Board may suspend or revoke the registration, license, or certificate granted to any person under the provisions of this Chapter or reprimand any registered trainee, licensee, or certificate holder if, following a hearing or by consent, the Board finds the registered trainee, licensee, or certificate holder to have:

(1) Procured registration, licensure, or certification pursuant to this Chapter by making a false or fraudulent representation;

(2) Made any willful or negligent misrepresentation or any willful or negligent omission of material fact;

(3) Accepted an appraisal assignment when the employment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or when the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon consequences resulting from the appraisal assignment;

(4) Acted or held himself or herself out as a registered trainee or a State-licensed or State-certified real estate appraiser when not so registered, licensed, or certified;

(5) Failed as a State-licensed or State-certified real estate appraiser to actively and personally supervise any person not licensed or certified under this Chapter who assists the State-licensed or State-certified real estate appraiser in performing real estate appraisals;

(6) Failed to make available to the Board for its inspection without prior notice, originals or true copies of all written contracts engaging the person's services to appraise real property, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports;

(7) Paid a fee or valuable consideration to any person for acts or services performed in violation of this Chapter;

(8) Acted as a real estate appraiser in an unworthy or incompetent manner as to endanger the interest of the public;

(9) Violated any of the standards of practice for real estate appraisers or any other rule promulgated by the Board;

(10) Performed any other act which constitutes improper, fraudulent, or other dishonest conduct; or

(11) Violated any of the provisions of this Chapter.

The Executive Director of the Board shall transmit a certified copy of all final orders of the Board suspending or revoking registrations, licenses, or certificates issued under this Chapter to the clerk of superior court of the county in which the licensee or certificate holder maintains the person's principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

SECTION 2. G.S. 93E-1-12 is amended by adding a new subsection to read:

"(c1) During the course of an investigation of a person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter, the Board may send to the trainee or licensed or certified real estate appraiser a letter of inquiry asking the trainee or licensed or certified real estate appraiser to respond to the inquiry. The letter of inquiry shall state the subject matter being investigated. Upon receipt of the letter of inquiry, the trainee or licensed or certified real estate appraiser shall respond to the Board within 30 calendar days. A trainee or licensed or certified real estate appraiser shall include in the written response copies of all documents requested by the Board in the letter of inquiry."

SECTION 3. This act becomes effective October 1, 2007, and applies to complaints made and letters of inquiry sent on or after that date.

SENATE BILL 1408:
Clarify Disciplinary Action/Appraisers Board

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 17, 2007
Introduced by:	Sen. Hartsell	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S1408-CSRC-38		

SUMMARY: ***Senate Bill 1408 would prohibit the North Carolina Appraisal Board (Board) from investigating an anonymous complaint against a trainee, or licensed or certified real estate appraiser. It would also provide that a trainee or licensed or certified real estate appraiser would have 30 days to respond to a letter of inquiry from the Board.***

CURRENT LAW: Chapter 93E establishes the North Carolina Appraisal Board. It is the entity that sets the training and licensing standards for real estate appraisers in North Carolina. G.S. 93E-1-12 gives the Board the authority to investigate complaints against a registered trainee or against a licensed or certified real estate appraiser. Pursuant to North Carolina Administrative Rules[1], in the course of its investigation, the Board may issue a letter of inquiry to the registered trainee or against a licensed or certified real estate appraiser for information related to the complaint. The registered trainee or against a licensed or certified real estate appraiser has 14 calendar days to respond to that inquiry

The Board may suspend or revoke the registration, license, or certificate if the Board finds that the holder of that credential has engaged in any of the following:

- Procured registration, licensure, or certification pursuant to this Chapter by making a false or fraudulent representation;
- Made any willful or negligent misrepresentation or any willful or negligent omission of material fact;
- Accepted an appraisal assignment when the employment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or when the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon consequences resulting from the appraisal assignment;
- Acted or held himself or herself out as a registered trainee or a State-licensed or State-certified real estate appraiser when not so registered, licensed, or certified;
- Failed as a State-licensed or State-certified real estate appraiser to actively and personally supervise any person not licensed or certified under this Chapter who assists the State-licensed or State-certified real estate appraiser in performing real estate appraisals;
- Failed to make available to the Board for its inspection without prior notice, originals or true copies of all written contracts engaging the person's services to appraise real property, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports;
- Paid a fee or valuable consideration to any person for acts or services performed in violation of this Chapter;

1

- Acted as a real estate appraiser in an unworthy or incompetent manner as to endanger the interest of the public;
- Violated any of the standards of practice for real estate appraisers or any other rule promulgated by the Board;
- Performed any other act which constitutes improper, fraudulent, or other dishonest conduct;
- Violated any of the provisions of this Chapter;
- Has been convicted of or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, to an offense which involves moral turpitude, in which an essential element is dishonesty, fraud, or deceit, or which, in the discretion of the Board, would reasonably affect the performance of the registered trainee, licensee, or certificate holder in the real estate appraisal business;
- A final civil judgment has been entered against the registered trainee, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of any appraisal of real estate;
- The trainee, licensee, or certificate holder has violated any of the provisions of G.S. 93E-1-13(a) when appraising his own property;
- The trainee, licensee, or certificate holder has had a real estate trainee registration or its equivalent, real estate appraiser license, or real estate appraiser certification suspended, revoked, or denied by a real estate licensing board in another state
- The trainee, licensee, or certificate holder has had any disciplinary action taken against any other professional license in North Carolina or any other state
- The trainee, licensee, or certificate holder has been adjudged mentally incompetent by a court
- The trainee, licensee, or certificate holder performs any of the duties of a real estate appraiser, including, but not limited to, site inspection and public records checks, while impaired by alcohol or drugs.

EFFECTIVE DATE: The act would become effective October 1, 2007, and apply to complaints made and letters of inquiry sent on or after that date.

S1408e1-SMRC-CSRC-38

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1430

Short Title:	Amend Crim Offenses/Injury to Property.	(Public)
Sponsors:	Senator Atwater.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSES OF INJURING REAL PROPERTY AND INJURING PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-127 reads as rewritten:

"**§ 14-127. Willful and wanton injury to real property.**

~~If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.~~

(a) Any person who willfully and wantonly damages, injures, or destroys any real property, either of a public or private nature, is guilty of a criminal offense punishable as follows:

(1) If the damage is one thousand dollars ($1,000) or less, the offense is a Class 1 misdemeanor.

(2) If the damage exceeds one thousand dollars ($1,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class H felony.

(3) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class D felony.

(b) This section applies to injuries to real property without regard to whether the property is destroyed or not."

SECTION 2. G.S. 14-160 reads as rewritten:

"**§ 14-160. Willful and wanton injury to personal property; punishments.**

(a) ~~If any person shall wantonly and willfully injure the personal property of another he shall be guilty of a Class 2 misdemeanor.~~ Any person who wantonly and willfully injures the personal property of another is guilty of a criminal offense punishable as follows:

(1) If the damage is two hundred dollars ($200.00) or less, the offense is a Class 2 misdemeanor.

(2) If the damage exceeds two hundred dollars ($200.00) but does not exceed one thousand dollars ($1,000), the offense is a Class 1 misdemeanor.

(3) If the damage exceeds one thousand dollars ($1,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class I felony.

(4) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class D felony.

~~(b) Notwithstanding the provisions of subsection (a), if any person shall wantonly and willfully injure the personal property of another, causing damage in an amount in excess of two hundred dollars ($200.00), he shall be guilty of a Class 1 misdemeanor.~~

(c) This section applies to injuries to personal property without regard to whether the property is destroyed or not."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1430
PROPOSED COMMITTEE SUBSTITUTE S1430-CSRD-23 [v.1]

5/16/2007 7:56:57 PM

Short Title: Amend Crim Offenses/Injury to Property. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSES OF INJURING REAL PROPERTY AND INJURING PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-127 reads as rewritten:

"**§ 14-127. Willful and wanton injury to real property.**

~~If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.~~

(a) Any person who willfully and wantonly damages, injures, or destroys any real property, either of a public or private nature, is guilty of a criminal offense punishable as follows:

(1) If the damage is fifty thousand dollars ($50,000) or less, the offense is a Class 1 misdemeanor.

(2) If the damage exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class I felony.

(3) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class H felony.

(b) This section applies to injuries to real property without regard to whether the property is destroyed or not."

SECTION 2. G.S. 14-160 reads as rewritten:

"**§ 14-160. Willful and wanton injury to personal property; punishments.**

(a) ~~If any person shall wantonly and willfully injure the personal property of another he shall be guilty of a Class 2 misdemeanor.~~ Any person who wantonly and willfully injures the personal property of another is guilty of a criminal offense punishable as follows:

(1) If the damage is two hundred dollars ($200.00) or less, the offense is a Class 2 misdemeanor.
(2) If the damage exceeds two hundred dollars ($200.00) but does not exceed fifty thousand dollars ($50,000), the offense is a Class 1 misdemeanor.
(3) If the damage exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000), the offense is a Class I felony.
(4) If the damage exceeds one hundred thousand dollars ($100,000), the offense is a Class H felony.

~~(b) Notwithstanding the provisions of subsection (a), if any person shall wantonly and willfully injure the personal property of another, causing damage in an amount in excess of two hundred dollars ($200.00), he shall be guilty of a Class 1 misdemeanor.~~

(c) This section applies to injuries to personal property without regard to whether the property is destroyed or not."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

SENATE BILL 1430:
Amend Crim Offenses/Injury to Property

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 16, 2007
Introduced by:	Sen. Atwater	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S1430-CSRD		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 1430 would amend two existing provisions of criminal law applying to damage to property. Amended G.S. 14-127 would replace the existing class 1 misdemeanor offense for damage to real property with three separate levels of offenses (from Class 1 misdemeanor to Class H felony) based on the amount of damage inflicted to the real property. Amended G.S. 14-160 would replace the existing Class 1 or 2 misdemeanor offenses for damaging personal property with four separate levels of offenses (from Class 2 misdemeanor to Class H felony) based on the amount of damage inflicted to the personal property.***

CURRENT LAW: Injury to real property is currently punishable as a Class 1 misdemeanor offense, regardless of the amount of damage inflicted[1]. For the purposes of this statute, real property may be regarded as land and anything fixed to it or a part of it, such as buildings, fences, water, minerals, etc.

Injury to personal property is currently punishable as a Class 1 misdemeanor offense if the amount of damage is more than $200.00, and as a Class 2 misdemeanor if the amount of damage is $200.00 or less. The extent of the damage is determined by the differential in market value just before and just after the injury[2], or, in the absence of an established market value, by the cost of repair.[3] For the purposes of this statute, personal property is property other than real property.

BILL ANALYSIS: Senate Bill 1430 would amend G.S. 14-127 "Willful and wanton injury to real property" and G.S. 14-160 "Willful and wanton injury to personal property; punishments".

G.S. 14-127 would provide three separate levels of offenses, based on the following amounts of damage to real property:

- Class 1 misdemeanor – damage of $50,000 or less.
- Class I felony – damage greater than $50,000 and up to and including $100,000.
- Class H felony – damage exceeding $100,000.

G.S. 14-160 would provide four separate levels of offenses, based on the following amounts of damage to personal property:

- Class 2 misdemeanor – damage of $200 or less.
- Class 1 misdemeanor – greater than $200 and up to and including $50,000
- Class I felony – damage greater than $50,000 and up to and including $100,000.
- Class H felony – damage exceeding $100,000.

[1] G.S. 14-127. Willful and wanton injury to real property.
[2] 220 N.C. 721.
[3] 261 N.C. 710.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

S1430e1-SMRD-CSRD

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/17/07

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

COMMITTEE SUBSTITUTE _____

Rep.) Apodaca
Sen.)

moves to amend the bill on page 1, line 16-17

( ) WHICH CHANGES THE TITLE

by rewriting ~~that~~ those lines to read:

"Person or persons in the commission of such crime, shall be guilty of a Class D felony."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

Principal Clerk ____
Reading Clerk ____

PLEASE NOTE THE POSSIBILITY OF A 2:00PM MEETING

2nd Corrected notice – Senate Bill 988 removed

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 22, 2007	10:00 AM	1124
Tuesday	May 22, 2007	**2:00 PM IF NECESSARY**	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 685	DNR Form Signatures.	Senator Kinnaird
SB 855	Exempt Private Investigators/Window Tinting.	Senator Snow
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1399	Ban Mobile Phone Use While Driving.	Senator Dannelly

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

PLEASE NOTE THE POSSIBILITY OF A 2:00PM MEETING

Corrected notice – Senate Bill 988 removed

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AND
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SB 988	Illegal Immigrants Tax Collection Enforcement.	Senator Berger
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1399	Ban Mobile Phone Use While Driving.	Senator Dannelly

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk _____
Reading Clerk _____

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, May 22, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 685	DNR Form Signatures.	Senator Kinnaird
SB 855	Exempt Private Investigators/Window Tinting.	Senator Snow
SB 988	Illegal Immigrants Tax Collection Enforcement.	Senator Berger
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
SB 1399	Ban Mobile Phone Use While Driving.	Senator Dannelly

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

May 22, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on May 22, 2007, with sixteen members present. Senator Hartsell welcomed pages, Abbie Christoph, Shalan Monroe, Seth Jenks, Sterling Cave, Emily Creech, and Sarah Anderson and thanked them for their service.

SB 1399 (Ban Mobile Phone Use While Driving.) Senator Dannelly moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Dannelly was recognized to explain the bill. He then presented an amendment and asked Staff Attorney, Kory Goldsmith to explain the amendment after which he moved that it be accepted. All voted and the motion carried. Mr. Harry Kaplan, representing AAA Carolinas spoke in favor of the bill. Mr. Paul Wilms, representing North Carolina Home Builders Association, Mr. Jack Cozart representing Sprint Nextel, Mr. Bob Kaylor representing Verizon and Ms. Kathleen Hawkins from Progress Energy spoke in opposition. After much discussion, Senator Dorsett moved for a favorable report. Senator Berger presented an amendment with Senator Dannelly's agreement and moved that it be adopted. All voted and the motion carried. Senator Dorsett withdrew her earlier motion and entered a new motion for a favorable report as amended, unfavorable to the original bill and rolled into a new committee substitute. All voted and the motion carried.

SB 855 (Exempt Private Investigators/Window Tinting.) Senator Snow was recognized to explain the bill. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB !202 (Litter Violation Reported by Citizen.) Senator Hartsell noted that Senator Jacumin had been unexpectedly call away. Senator Hartsell presented an amendment. Senator Jones moved that it be adopted, all voted and the motion carried. The bill will be heard at a later time.

SB 685 (DNR Form Signatures.) Senator Kinnaird was recognized to explain the bill. She then introduced Attorney Roger Manus to continue the explanation. Mrs. Ann Barnes spoke in favor of the bill. Senator Kinnaird answered Senator Goodall's question. Senator Hartsell noted there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion. Senator Queen so moved, all voted and

the motion carried. Mr. High Tilson, representing the North Carolina Hospital Association, spoke on the bill. Senator Goodall moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 22, 2007

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

FAVORABLE

S.B. **855** Exempt Private Investigators/Window Tinting.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1432** Challenge To Administrative Subpoena.
Draft Number: PCS 35383
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Tuesday, May 22, 2007

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

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

S.B. **685** DNR Form Signatures.

Draft Number:	PCS 35386
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, May 23, 2007

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

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

S.B. **1399** Ban Mobile Phone Use While Driving.

Draft Number:	PCS 55497
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-22-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Frank & Ann Barnes	Chapel Hill
Roger Manus	GACPD
Sally Abril	GACPD
Camelle Marcom	Wake Forest
Dick Hamilton	WRC
Jon Williams	CCAS
BRUCE THOMPSON	PARKER POE
Brian Repass	NBC-17
Jack Cozart	Womble
Barbara Canales	BBH&L

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-22-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Wilson	AARP
Elizabeth Wickham	LifeTree
Rose McCreery	"
Msgr. Michael Clay	Diocese of Raleigh
Chad Essick	Poyner & Spruill, LLP
Colleen Kachanek	Smith Moore
David McSwain	NC Realtors
Elizabeth Dalton	NCBMA
Patrick Kelly	UNC Preventive medicine
Julia Leggett	ADA-CIL / The Arc of NC
Eric Sauls	Edmisten & Webb

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-22-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Jones	NCHA
[illegible]	NCMS
[illegible]	NC WRC
[illegible]	Duke
[illegible]	NCMS
[illegible]	Duke Energy
[illegible]	NCOS & NCPA
[illegible]	NHANC
[illegible]	[illegible]
Gideon Myers	
[illegible]	NCMS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

May 22, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
RW Kaylor	Kaylor Law Firm
Tom Bennett	NCACDSG
[illegible]	NMPS
Butch Gunnells	NCBA
Jim Johnson	BSP

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5-22-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank & Ann Barnes	Chapel Hill
Sally April	GACPD
Judy McConnell	IOG
Elizabeth Wilkham	LIFETREE
Douglas Wilkham	LIFETREE
Brian McRay	NRC-17
Roger Moore	GACPD
J Crawford	UNC
Mike Brough	Carrboro
Lisa Piercy	Duke Energy
Nan Messenheimer	Poyner & Spruill

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Gardner	Duke Energy
Barbara Carlson	BBCR
Bruce Thompson	Parker Poe
Brian Barnes	N.C. Close-Up
Kathy Hawkins	Progress Energy
[illegible]	NCHA
Hugh Tilson	NCHA
Dick Hamilton	WRC
[illegible]	[illegible]
David McGowan	NCAR
Joan Troy	NC WRC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Keller	UNC Pembroke Student
Jan Wi[illegible]	CCPS
ANN Lobb	DWQ
Bo [illegible]	[illegible]
[illegible]	NCRMA
[illegible]	NCMS
[illegible]	NCMS
[illegible]	[illegible] Inc.
[illegible]	MWC
Sandy Sands	WCSR
HAROLD Webb	WR Co Com.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 685

Short Title:	DNR Form Signatures.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Judiciary 1 (Civil).	

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SIGNATURE OF THE PATIENT OR THE PATIENT'S PARENT, GUARDIAN, OR REPRESENTATIVE ON "DO NOT RESUSCITATE" ORDER FORMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:

(1) It is determined by the attending physician that the person's present condition is:
   a. Terminal and incurable; or
   b. Repealed by Session Laws 1993, c. 553, s. 29.
   c. Diagnosed as a persistent vegetative state; and

(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and

(3) A vital function of the person could be restored by extraordinary means or a vital function of the person is being sustained by extraordinary means; or

(4) The life of the person could be or is being sustained by artificial nutrition or hydration;

then, extraordinary means or artificial nutrition or hydration may be withheld or discontinued in accordance with subsection (b).

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) and no instrument has been executed as provided in G.S. 90-321 the extraordinary means or artificial nutrition or hydration may be withheld or discontinued upon the direction and under the supervision of the attending physician with the written and signed concurrence on the DNR order form (i) of a health care agent appointed

pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order. If none of the above is available then at the discretion of the attending physician the extraordinary means or artificial nutrition or hydration may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such extraordinary means or artificial nutrition or hydration shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 685
PROPOSED COMMITTEE SUBSTITUTE S685-CSRD-26 [v.4]

5/22/2007 1:46:24 PM

Short Title: Study DNR Form Signatures. (Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY REQUIRING THE SIGNATURE OF THE PATIENT'S PARENT, GUARDIAN, OR REPRESENTATIVE ON "DO NOT RESUSCITATE" ORDER FORMS.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services shall study the effect of requiring a written and signed concurrence by the patient's guardian or representative on a physician's order form specifying withholding or discontinuing extraordinary means or artificial nutrition or hydration pursuant to G.S. 90-322(b). The study shall examine the anticipated effect that amending G.S. 90-322(b) to add this requirement to the current process would have on the provision, withholding, or discontinuation of care involving extraordinary means or artificial nutrition or hydration to patients. Issues that may be addressed by the Department in its study include current practices relating to issuance of "Do Not Resuscitate" (DNR) orders in other states, the addition of patient guardian or representative signatures to a physician's order form, and anticipated increases or reductions in the provision, discontinuation or withholding of each of the types of care affected by "DNR" orders.

In conducting the study, the Department shall review relevant incident data and shall seek input from the North Carolina Medical Society, the North Carolina Hospital Association, and patient advocacy groups. The Department shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly.

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

SENATE BILL 685:
Study DNR Form Signatures

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 21, 2007
Introduced by:	Sen. Kinnaird	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S685-CSRD		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 685 would direct the Department of Health and Human Services to study the effect of requiring a written and signed concurrence by a patient's guardian or representative on a physician's order specifying withholding or discontinuing extraordinary means of support of an individual who is comatose and not expected to recover. The PCS would direct the Department to report its findings to the 2008 Regular Session of the 2007 General Assembly.***

[As introduced, this bill was identical to H690, as introduced by Rep. Insko, which is currently in House Health .]

CURRENT LAW:

Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. That Article provides that an individual may declare his or her wishes as to the use of 'extraordinary means' to prolong life. 'Extraordinary means' are defined as "any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function". G.S. 90-321(a)(2). If the declaration is signed, witnessed, dated and proved, or is a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes, then the attending physician may rely upon the declaration. The declaration must be witnessed by two people, who are unrelated to the declarant or the declarant's spouse, are not entitled or expected to receive anything under the will of the declarant, are not the attending physician or an employee of the health care facility treating the declarant, and have no claim against the estate at the time of the declaration.

If an individual, not having made a declaration, is comatose and there is no reasonable possibility that he or she will return to a cognitive sapient state or is mentally incapacitated, may still have extraordinary means of support withheld or discontinued, provided all of the following apply to the individual's condition:

1. It is determined by the attending physician that the individual's present condition is either of the following:
    a. Terminal and incurable.
    b. Is diagnosed as a persistent vegetative state.
2. There is confirmation of the person's present condition in writing by a physician other than the attending physician.
3. Either of the following apply
    a. A vital function of the individual could be restored by extraordinary means or a vital function of the individual is being sustained by extraordinary means.
    b. The life of the individual could be or is being sustained by artificial nutrition or hydration.

In order to withhold or discontinue extraordinary means of support for an individual meeting the above criteria who has not made a declaration, the attending physician must direct and supervise such withholding or discontinuance, with the concurrence of the following, in order:

1. A health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes
2. A guardian of the person.
3. The individual's spouse.
4. A majority of the relatives of the first degree

If none of those persons are available, then the withholding or discontinuance is at the discretion of the attending physician.

BILL ANALYSIS: The Proposed Committee Substitute would direct the Department of Health and Human Services to study the effect of requiring the concurrence of the persons listed above, in order, to be signed and in writing on the order specifying withholding or discontinuance of extraordinary means or artificial nutrition or hydration.

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

Erika Churchill, counsel to Senate Judiciary I, substantially contributed to this summary.

S0685e1-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 855

Short Title:	Exempt Private Investigators/Window Tinting.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PRIVATE INVESTIGATORS LICENSED BY THE PRIVATE PROTECTIVE SERVICES BOARD OF THE DEPARTMENT OF JUSTICE FROM THE WINDOW TINTING REQUIREMENTS OF CHAPTER 20 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-127(c) is amended by adding a new subdivision to read:

"**§ 20-127. Windows and windshield wipers.**

...

(c) Tinting Exceptions. – The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck

chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(12) A window of a vehicle that is being operated by a private investigator as defined in G.S. 74C-3(a)(8) and who is properly licensed by the Private Protective Services Board as required in G.S. 74C-2.

..."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 855:
Exempt Private Investigators/Window Tinting

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 21, 2007
Introduced by:	Sen. Snow	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 855 would provide an exception from the vehicle window tinting restrictions imposed by the General Statutes for a vehicle that is being operated by a private investigator who is properly licensed by the Private Protective Services Board.

CURRENT LAW: Under the General Statutes vehicle windows may be tinted, but must have: (i) total light transmission of at least 35%, and (ii) light reflectance of 20% or less. With regard to windshields, tinting cannot extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever is longer.

Current exceptions to vehicle window tinting restrictions: The restrictions concerning percentage of light transmission and light reflectance do not apply to the following vehicle windows (note that these vehicles are, however, subject to the windshield tinting length limitation):

- Excursion passenger vehicles.
- For-hire passenger vehicles.
- Common carrier of passengers.
- Motor homes.
- Ambulances.
- Property-hauling vehicle (exception for rear window only)
- Limousines.
- Law enforcement vehicles.
- Multipurpose vehicles that are behind the driver of the vehicle (passenger vehicles that are designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation, for example, minivans and pickup trucks).
- Vehicles for which DMV has issued a medical exception permit.

Penalty for violation of vehicle window tinting restrictions: A violation is a Class 2 misdemeanor, punishable by 1 to 30 days of community punishment, assuming no prior convictions. The statute does, however, provide a defense for individuals who provide evidence that they have removed the tinting in violation within 15 days of the charge.

BILL ANALYSIS: The bill would provide an exception from the vehicle window tinting restrictions imposed by the General Statutes for a vehicle that is being operated by a private investigator who is properly licensed by the Private Protective Services Board.

EFFECTIVE DATE: The bill would become effective December 1, 2007, and apply to offenses committed on or after that date.

BACKGROUND: The Georgia General Assembly passed a similar bill in April 2007.

S0855e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1202

Short Title:	Litter Violation Reported by Citizen.	(Public)
Sponsors:	Senator Jacumin.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CITATION MAY BE ISSUED FOR A LITTERING OFFENSE THAT INVOLVES THE OPERATION OF A MOTOR VEHICLE BASED ON THE AFFIDAVIT OF A WITNESS.

The General Assembly of North Carolina enacts:

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

"**§ 14-399.3. Civil penalty for litter may be assessed based on witness's affidavit.**

(a) Reporting of Litter Violation. – Any North Carolina resident who witnesses a littering violation under G.S.14-399 that involves the operation of a motor vehicle may file a sworn affidavit reporting the incident with a magistrate in the county in which the violation occurred. The affidavit may be mailed by first-class mail to the magistrate in the appropriate county. The affidavit shall include the license plate of the vehicle involved in the violation, a description of the vehicle, and the date, location, and approximate time of the violation.

(b) Citation Issued. – The magistrate shall issue a citation to the owner of the vehicle based on the affidavit filed by the witness. The citation shall clearly state the violation, the penalty for the violation, the procedure for paying the civil penalty assessed, and the manner in which the violation may be challenged. The citation shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration.

(c) Responsibility of Vehicle Owner and Procedure for Challenging the Violation. – Notwithstanding G.S. 14-399.3(b) the owner of the vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes to a magistrate of the county that issued the citation the following:

(1) The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

(2) An affidavit stating that the vehicle involved was at the time stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(d) Civil Penalties. – Notwithstanding G.S. 14-399, a violation enforced under this section shall be a noncriminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed. If the vehicle owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional civil penalty for failure to respond not to exceed twenty-five dollars ($25.00). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The actual costs of collection, not to exceed twenty percent (20%) of the amount collected shall be remitted to the clerk of court to be credited to the office of the magistrate.

(e) Administrative Office of the Courts to Establish Collection and Appeal Procedures. – The Administrative Office of the Courts shall establish procedures for the collection of the penalties assessed under this section and may enforce the penalties by civil action in the nature of debt."

SECTION 2. G.S. 7A-292 is amended by adding the following new subdivisions to read:

"(15) To accept the filing of affidavits reporting litter violations and to issue citations pursuant to G.S. 14-399.3.

(16) To hear and enter judgment in all litter cases appealed under G.S. 14-399.3."

SECTION 3. By December 1, 2007, the Administrative Office of the Courts shall develop an affidavit form that may be used to report a violation as provided by G.S. 14-399.3. The Administrative Office of the Courts shall provide the forms to each magistrate in the State and shall also make the form accessible to the public through the Internet. Each magistrate shall make the printed forms available to any member of the general public who requests one.

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1202
PROPOSED COMMITTEE SUBSTITUTE S1202-CSRC-33 [v.4]

5/9/2007 5:21:14 PM

Short Title: Litter Violation Reported by Citizen. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CITATION MAY BE ISSUED FOR A LITTERING OFFENSE THAT INVOLVES THE OPERATION OF A MOTOR VEHICLE OR A VESSEL BASED ON THE AFFIDAVIT OF A WITNESS.

The General Assembly of North Carolina enacts:

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

"**§ 14-399.3. Civil penalty for litter may be assessed based on witness's affidavit.**

(a) Reporting of Litter Violation. – Any North Carolina resident who witnesses a littering violation under G.S.14-399 that involves the operation of a motor vehicle or a vessel as defined in G.S. 75A-2(5) may file a sworn affidavit reporting the incident with a magistrate in the county in which the violation occurred. The affidavit may be mailed by first-class mail to the magistrate in the appropriate county. The affidavit shall include the license plate number of a motor vehicle involved in a violation reported under this section, or the identification number of a vessel involved in a violation reported under this section, a description of the motor vehicle or vessel, and the date, location, and approximate time of the violation. The affidavit shall also include the following: "ANY PERSON WHO KNOWINGLY AND WILLFULLY MAKES A FALSE STATEMENT IN AN AFFIDAVIT REPORTING A LITTER VIOLATION UNDER G.S. 14-399.3 SHALL BE GUILTY OF A CLASS 2 MISDEMEANOR AND ASSESSED A FINE OF UP TO $1,000.".

(b) Citation Issued. – The magistrate shall issue a citation to the owner of the motor vehicle or vessel based on the affidavit filed by the witness. The citation shall clearly state the violation, the penalty for the violation, the procedure for paying the civil penalty assessed, and the manner in which the violation may be challenged. The citation shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration or vessel identification number.

(c) Responsibility of Motor Vehicle or Vessel Owner and Procedure for Challenging the Violation. – Notwithstanding G.S. 14-399.3(b) the owner of the motor vehicle or vessel shall be responsible for a violation unless the owner can furnish evidence that the motor vehicle or vessel was, at the time of the violation, in the care, custody, or control of another person or that there was no violation. The owner of the motor vehicle or vessel shall not be responsible for the violation if the owner, within 21 days after notification of the violation, furnishes to a magistrate of the county that issued the citation the following:

(1) The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the motor vehicle or vessel at the time of the incident; or

(2) An affidavit stating that the motor vehicle or vessel involved was at the time stolen or in the care, custody, or control of some person who did not have permission of the owner to use the motor vehicle or vessel; or.

(3) An affidavit that establishes by a preponderance of the evidence that there was no violation.

(d) Magistrate's determination. If a person issued a citation under this section does not pay the penalty assessed or challenge the citation as provided by subsection (c) of this section, the magistrate shall enter a default judgment against the person for the appropriate penalty as provided by subsection (e) of this section. If a person challenges a citation under this section, and the magistrate, based on the affidavits determines that the person responding has not satisfied the provisions of subsection (c) of this section, the magistrate shall enter a judgment against the person for the appropriate penalty under subsection (e) of this section. If the magistrate, based on the affidavits, determines that a person who challenges a citation under this section has satisfied the provisions of subsection (c) of this section the magistrate shall dismiss the citation.

(e) Civil Penalties. – Notwithstanding G.S. 14-399, a violation enforced under this section shall be a noncriminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed. If the owner of the motor vehicle or vessel fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional civil penalty for failure to respond not to exceed twenty-five dollars ($25.00). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The actual costs of collection, not to exceed twenty percent (20%) of the amount collected shall be remitted to the clerk of court to be credited to the office of the magistrate.

(f) Enforcement of penalties. – A magistrate may enforce a penalty assessed under this section by civil action in the nature of debt.

(g) False statement in affidavit. – Any person who knowingly and willfully makes a false statement in an affidavit submitted under this section is guilty of a Class 2 misdemeanor punishable by a fine of up to one thousand dollars ($1,000). No other punishment shall apply."

SECTION 2. G.S. 7A-292 is amended by adding the following new subdivisions to read:

"(15) To accept the filing of affidavits reporting litter violations and to issue citations pursuant to G.S. 14-399.3.

(16) To hear and enter judgment in all litter cases under G.S. 14-399.3."

SECTION 3. By December 1, 2007, the Administrative Office of the Courts shall develop an affidavit form that may be used to report a violation as provided by G.S. 14-399.3. The Administrative Office of the Courts shall provide the forms to each magistrate in the State and shall also make the form accessible to the public through the Internet. Each magistrate shall make the printed forms available to any member of the general public who requests one.

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1202:
Litter Violation Reported by Citizen

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 9, 2007
Introduced by:	Sen. Jacumin	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S1202-CSRC-33		

SUMMARY: ***Senate Bill 1202 would create a civil process by which a citizen could file a sworn affidavit with a magistrate alleging a litter violation involving a motor vehicle or a vessel. The magistrate could issue a citation and a fine for that violation. The person accused of littering may file an affidavit challenging the violation. If the magistrate finds that a violation occurs, the magistrate shall issue a fine of $100 and an additional $25 for failure to pay the fine in a timely manner.***

CURRENT LAW: G.S. 14-399 prohibits littering. The types of acts that are prohibited and the applicable punishments are outlined below:

Littering that is intentional or reckless - G.S. 14-399(a)

Amount of Litter/type/ purpose of littering	Punishment for 1st offense	Other consequences related to littering from a vehicle or watercraft
Less than 15 lbs, not a commercial purpose	Class 3 misdemeanor, fine between $250-$1000, possible community service from 8-24 hours	1 drivers license point. Presumption operator committed offense.
15 to 500 lbs., not a commercial purpose	Class 3 misdemeanor, fine between $500-$2,000, required community service from 24-100 hours	1 drivers license point Presumption operator committed offense.
Over 500 lbs, any amount for a commercial purpose, or any hazardous waste	Class I felony	1 drivers license point. Presumption operator committed offense. Vehicle or vessel considered contraband, subject to seizure and forfeiture.

Littering without intentionality or recklessness - G.S. 14-399(a1)

Amount of Litter	Punishment for 1st offense	Other consequences related to littering from a vehicle or watercraft
Less than 15 lbs	Infraction, fine of not more than $100, possible community service from 4-12 hours	Presumption operator committed offense.
15 to 500 lbs.	Infraction, fine nor more than $200, possible community service from 8-24 hours	Presumption operator committed offense.
Over 500 lbs	Infraction, fine nor more than $300, possible community service from 16-50 hours	Presumption operator committed offense.

BILL ANALYSIS: Senate Bill 1202 would create a civil process by which a citizen could allege a litter violation and the violator would be assessed a civil fine of $100.

G.S. 14-299.3(a) would allow a citizen who witnesses a littering violation that involves a motor vehicle or vessel could file a sworn affidavit reporting to violation with a magistrate in the county where the violation occurred. The affidavit would include the license plate number of the motor vehicle or the identification number of the vessel. It would also include a description of the vehicle or vessel, the date, location, and approximate time of the violation. It would also include language describing the penalty for filing a false affidavit.

Upon receipt of the affidavit, the magistrate would issue a citation to the owner of the vehicle or vessel. The citation would state the violation, the penalty for the violation, and the manner by which the violation could be challenged. The citation could be sent by first class service to the owner.

The owner of the vehicle or vessel would be responsible for the violation unless he or she can furnish within 21 days after notification of the violation of any of the following:

- The name and address of the person who had care, custody and control of the vehicle or vessel at the time of the incident.
- An affidavit stating the vehicle was stolen or under the control of another person without the permission of the owner at the time of the violation.
- An affidavit that establishes by a preponderance of the evidence that there was no violation.

The magistrate will enter a default judgment against the person issued a citation if that person does not challenge the citation or does not pay the penalty assessed. The magistrate shall also enter a judgment against the person if the magistrate finds the person satisfied the grounds for challenging the citation. The penalty for a violation would b e$100, plus an additional $25 for failure to pay the fine in a timely manner.

A person who willfully and knowingly swears a false affidavit under this section would be guilty of a Class 2 misdemeanor and fined $1000.

The Administrative Office of the Courts would be required to develop an affidavit for this purpose and make it available to the public.

EFFECTIVE DATE: The act would be become effective December 1, 2007 and apply to offenses occurring on or after that date.

S1202e1-SMRC-CSRC-33

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1202

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

S1202-ARCf-40 [v.3]

Date May 22, 2007 ,2007

Comm. Sub. [YES]
Amends Title [NO]
S1202-CSRC-33[v.4]

Senator Jones

moves to amend the bill on page 2, lines 36-38, by rewriting the lines to read:

"G.S. 115C-4578.2. The magistrate shall also collect from the violator a fee of twenty-five dollars ($25.00) for the costs of the proceeding and collection.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1399

Short Title:	Ban Mobile Phone Use While Driving.	(Public)
Sponsors:	Senator Dannelly.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-140.6. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access such service.

(2) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(3) Using. – Holding a mobile telephone to, or in the immediate proximity of, the user's ear.

(4) Handheld mobile telephone. – A mobile telephone with which a user engages in a call using at least one hand.

(5) Hands-free mobile telephone. – A mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(6) Engage in a call. – Talking into or listening on a handheld mobile telephone, but shall not include holding a mobile telephone to activate, deactivate, or initiate a function of such telephone.

(7) Immediate proximity. – That distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such

mobile telephone, but shall not require physical contact with such operator's ear.

(b) Offense. – Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public street or highway while using a mobile telephone to engage in a call while such vehicle is in motion. An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section. The presumption established by this subsection is rebuttable by evidence tending to show that the operator was not engaged in a call.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the following:

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following persons while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone.

(e) School Bus Drivers. – A person shall not use a mobile telephone or other electronic device, including those with hands-free accessories, while operating a moving school bus that is carrying passengers; provided, however, this section shall not apply to a school bus driver who places an emergency call to school officials or for the purposes listed in subdivision (d)(1) of this section.

(f) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones.

(g) A violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. There shall be no points assessed by the Division for a violation of this section."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1399
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1399-CSRC-41 [v.1]

5/21/2007 7:58:17 PM

Short Title: Ban Mobile Phone Use While Driving. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-140.6. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Handheld mobile telephone. – As defined in G.S. 20-137.3(a)(2)(i).

(2) Hands-free mobile telephone. – As defined in G.S. 20-137.3(a)(2)(ii).

(3) Mobile telephone. –As defined in G.S. 20-137.3(a)(2).

(4) Wireless telephone service. – As defined in G.S. 20-137.3(a)(3).

(b) Offense. – Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public street or highway or public vehicular area while using a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to any of the following:

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The use of a mobile telephone by any of the following persons while in the performance of their official duties: a law enforcement officer; a

member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone.

(4) A violation of G.S. 20-137.3 by a person under the age of 18 years.

(e) School Bus Drivers. – A person shall not use a mobile telephone or other electronic device, including those with hands-free accessories, while operating a moving school bus that is carrying passengers. This subsection shall not apply to a school bus driver who places an emergency call to school officials or for the purposes listed in subdivision (d)(1) of this section.

(f) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones.

(g) Penalty. – Any person violating this section shall have committed an infraction and shall pay a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points shall be assessed by the Division as a result of a violation of this section."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 1399:
Ban Mobile Phone Use While Driving

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 21, 2007
Introduced by:	Sen. Dannelly	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition S1399-CSRC-41		

SUMMARY: ***Senate Bill 1399 would prohibit a person from operating a motor vehicle while using a mobile telephone. A person who violates this provision would be responsible for committing an infraction and subject to a $100 fine. No drivers license points would be assessed.***

The Proposed Committee Substitute revises the bill to use definitions and make it consistent with laws enacted 2006 prohibiting the use of a mobile phone by persons who are under 18 years of age.

CURRENT LAW: G.S. 20-1137.3 (see below) prohibits a person who is under the age of 18 to use a mobile telephone or additional technology while operating a motor vehicle on a public street or highway or public vehicular area while the vehicle is in motion. The prohibition does not apply to a stationary vehicle. It also does not apply if the use of the mobile telephone is being used for the sole purpose of communicating an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency, or the operator's parent, legal guardian or spouse.

Mobile telephone is defined a device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone. [1]

A wireless telephone service A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.[2]

A person who violates G.S. 20-137.3 commits an infraction and shall pay a fine of $25. No drivers license point, insurance surcharge, or court costs shall be assessed as a result of a violation. The driver may also have the restrictions of his or her limited driving privilege extended for up to 6 months.

BILL ANALYSIS: Senate Bill 1399 would enact G.S. 20-140.6 to prohibit the use of a handheld mobile telephone by a person who is operating a motor vehicle on a public street or highway or public vehicular area while the vehicle is in motion. The prohibition would not apply to a hands-free mobile telephone which is defined as a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

The prohibition would not apply if the use of the mobile telephone is for the sole purpose of communicating with an emergency response operator; a hospital, physician's office, or health clinic; a

[1] G.S. 20-137.3(a)(2).
[2] G.S. 20-137.3(a)(3).

public or privately owned ambulance company or service; a fire department; or a law enforcement agency. It would not apply to a law enforcement officer, a member of a fire department or the operator of a public or private ambulance while in the performance of their official duties. It also would not apply to violations by persons under 18 years of age pursuant to G.S. 20-137.3.

A violation of this section would be an infraction punishable by a fine of $100. No drivers license point would be assessed by the Division of Motor Vehicles.

EFFECTIVE DATE: The act would become effective July 1, 2007, and apply to offenses committed on or after that date.

§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.

(a) Definitions. – The following definitions apply in this section:

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent, legal guardian or spouse.

(e) Penalty. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE May 22, 2007

S. B. No. 1399 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Sen.) Dannelly

moves to amend the bill on page 2, line 12-15

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"(g) Penalty. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section."

SIGNED E. Dannelly

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1399

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

S1399-ARC-41 [v.1]

Date May 22, 2007 ,2007

Comm. Sub. [YES]
Amends Title [NO]
S1399-CSRC-41[v.1]

Senator Berger of Franklin

moves to amend the bill on page 2, line 15, by inserting after the period and before the quotation mark, the following:

"Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the driver in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Box Contents for Box 15 – Standing Committee Minutes
Item 25894

15	2007 & 2008	Senate	Judiciary II (begin June 7, 2007)
15	2007 & 2008	Senate	Mental Health & Youth Services
15	2008	Senate	Pensions & Retirement
15	2007 & 2008	Senate	Rules & Operations of the Senate
15	2007 & 2008	Senate	State & Local Government
15	2007 & 2008	Senate	Transportation

Principal Clerk ____
Reading Clerk ____

CORRECTED: **PLEASE NOTE TIME IS CHANGED TO 11:00 AM**

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 7, 2007	11:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 854	Amend Private Protective Services Act.	Senator Snow
HB 1243	Courtroom Procedures/Juvenile Proceedings.	Representative Bordsen Representative Bryant Representative Mobley Representative Wainwright
HB 1634	Custody/Visitation/Military Orders.	Representative Martin Representative Hall Representative Goodwin Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 7, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 854	Amend Private Protective Services Act.	Senator Snow
HB 1243	Courtroom Procedures/Juvenile Proceedings.	Representative Bordsen Representative Bryant Representative Mobley Representative Wainwright
HB 1634	Custody/Visitation/Military Orders.	Representative Martin Representative Hall Representative Goodwin Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 7, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 854	Amend Private Protective Services Act.	Senator Snow
HB 1243	Courtroom Procedures/Juvenile Proceedings.	Representative Bordsen Representative Bryant Representative Mobley Representative Wainwright
HB 1634	Custody/Visitation/Military Orders.	Representative Martin Representative Hall Representative Goodwin Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

June 7, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 7, 2007, with eleven members present. Senator Hartsell introduced pages Tenise Henson, Kenille Sumler, Olivia Hyatt, Jaynee Boyd and Forrest Brandt and thanked them from their service.

HB 1243 (Courtroom Procedures/Juvenile Proceedings.) Senator Hartsell recognized Representative Bryant to explain the bill. Senator Bingham moved for a favorable report, all voted and the motion carried.

HB 1634 (Custody/Visitation/Military Orders.) Senator Hartsell recognized Representative Martin to explain the bill. Representative Goodwin gave additional explanation. Mr. Mark Sullivan, Attorney, Mr. Paul Pulley, representing the North Carolina Academy of Trial Lawyers, and Mr. Bryan Lewis, representing the Covenant with North Carolina's Children spoke on the bill. Senator East moved for a favorable report, all voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 7, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McKay	Gov Office
Pete Jarvis	Gov office
Casandra White	Gov. office
Linden Gwinn	Sen. Dannelly
Wayne Toney	Staff
Christine Wunsche	10G - Daily Bulletin
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Kevin Daly	ACLU-NC
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NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 11, 2007

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

FAVORABLE

H.B.(SCS #1) **1243** Courtroom Procedures/Juvenile Proceedings.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 854

Short Title:	Amend Private Protective Services Act.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3 reads as rewritten:

"**§ 74C-3. Private protective services profession defined.**

(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) "Armored car profession" means any person, firm, association, or corporation which provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables for a fee or other valuable consideration. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) ~~"Counterintelligence service profession"~~"Electronic countermeasures profession' means any person, firm, association, or corporation which discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation for a fee or other valuable consideration.

(4) "Courier service profession" means any person, firm, association, or corporation which transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious service

for a fee or other valuable consideration. Armed courier service ~~guards~~ officers shall be subject to the provisions of G.S. 74C-13.

(5) "Detection of deception examiner" means any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(6) "Security ~~guard~~ officer and patrol profession" means any person, firm, association, or corporation that provides a security ~~guard~~ officer on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performing one or more of the following functions:

a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

b. Prevention, observation, or detection of any unauthorized activity on private property;

c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services; or

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(7) "Guard-dog service profession" means any person, firm, association, or corporation which contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property for a fee or other valuable consideration.

(8) "Private detective" or "private investigator" are synonymous and mean any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning the below-listed topics on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States;

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

c. The location, disposition, or recovery of lost or stolen property;

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties;

e. Securing evidence to be used before any court, board, officer, or investigative committee; or

f. Protection of individuals from serious bodily harm or death.

(9) "Special limited ~~guard~~ officer and patrol profession" means any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security ~~guard~~ officer and patrol license. Any experience gained under this limited license shall not be counted as experience for a security ~~guard~~ officer and patrol license.

(b) "Private protective services" shall not mean:

(1) Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance company;

(2) An officer or employee of the United States, this State, or any political subdivision of either while ~~such~~ the officer or employee is engaged in the performance of his or her official duties within the course and scope of his or her employment with the United States, this State, or any political subdivision of either;

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,

b. Information for employment purposes,

c. Information for the underwriting of insurance involving the consumer,

d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility, or

e. A legitimate business need for the information in connection with a business transaction involving the consumer;

(4) An attorney at law licensed to practice in North Carolina while engaged in ~~such~~ the practice of law and ~~his~~ the attorney's agent, provided ~~said~~ the agent is performing duties only in connection with his or her principal's practice of law;

(5) The legal owner or lien holder, and his or her agents and employees, of personal property which has been sold in a transaction wherein a security interest in personal property has been created to secure the

sales transaction, who engage in repossession of ~~said~~ the personal property;

(6) Repealed by Session Laws 1989, c. 759, s. 3.

(7) Repealed by Session Laws 1981, c. 807, s. 1.

(8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job for that person, firm, association, or corporation and, while performing ~~such~~ the job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a licensee;

(9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General Statutes;

(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment;

(11) A person who conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:

a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) Research laboratories and consultants who analyze, test, or in any way apply their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and give their opinions and findings to the requesting source or to a designee of the requestor;

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security ~~guard~~ officer and wears, carries, or possesses a firearm in the performance of ~~his~~ the employee's duties, the provisions of G.S. 74C-13 apply;

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the business; or

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts."

SECTION 2. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court;

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such schools; ~~and~~

(10) Contract for services as necessary to carry out the functions of the ~~Board.~~Board;

(11) Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter; and

(12) Approve a design for a badge or shield that indicates a person is licensed to engage in private protective services."

SECTION 3. G.S. 74C-9 reads as rewritten:

"**§ 74C-9. Form of license; term; renewal; posting; branch offices; not assignable; late renewal fee.**

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee,

(2) The name under which the licensee is to operate, and

(3) The number and expiration date of the license.

(b) The license shall be issued for a term of ~~one year.~~two years. A trainee permit shall be issued for a term of ~~one year.~~two years. All licenses must be renewed prior to the expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the licensee's principal place of business, in North Carolina, unless for good cause exempted by the Director. A license issued under this Chapter is not assignable. The Board may require all licensees to complete continuing education courses approved by the Board before renewal of their licenses.

(c) Repealed by Session Laws 1989, c. 759, s. 7.

(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of one year. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ($50.00);

(5) A late renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the licensee;

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);
(7) An application fee for ~~an armed security guard~~a firearm registration permit not to exceed fifty dollars ($50.00);
(8) A new, renewal, replacement, or reissuance fee for ~~an armed security guard~~a firearm registration permit not to exceed thirty dollars ($30.00);
(9) An application fee for certification as a certified trainer not to exceed fifty dollars ($50.00);
(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ($25.00);
(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);
(12) An unarmed registration transfer fee not to exceed fifteen dollars ($15.00);
(13) A branch office license fee not to exceed fifty dollars ($50.00); and
(14) A special limited ~~guard~~ officer and patrol license fee not to exceed one hundred dollars ($100.00).

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter.

(f) A license or trainee permit granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by the licensee or permit holder to the Director of intended renewal, the payment of the proper fee, and evidence of a policy of liability insurance as prescribed in G.S. 74C-10(e).

The renewal shall be finalized before the expiration date of the license. In no event will renewal be granted more than three months after the date of expiration of a license or trainee permit.

(g) Upon notification of approval of ~~his~~ the application by the Board, an applicant must furnish evidence that ~~he~~ the applicant has obtained the necessary liability insurance required by G.S. 74C-10 and obtain the license applied for or ~~his~~ the application shall lapse.

(h) Trainee permits shall not be issued to applicants that qualify for a private detective license. A licensed private detective may supervise no more than five trainees at any given time."

SECTION 4. G.S. 74C-11 reads as rewritten:

"**§ 74C-11. Probationary employees and registration of regular employees; unarmed security ~~guard~~ officer required to have registration card.**

(a) All licensees may employ unarmed security ~~guards~~ officers as probationary employees for 20 calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security ~~guard~~ officer as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion,

extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.

(b) A security ~~guard~~ officer and patrol company may not employ an unarmed security ~~guard~~ officer in a regular position unless the ~~guard~~ officer has a registration card issued under subsection (d) of this section. A person engaged in a private protective services profession may not employ an armed security ~~guard~~ officer unless the ~~guard~~ officer has a firearm registration permit issued under G.S. 74C-13.

(c) The Director shall be notified in writing of the termination of any regular employee registered under subsection (a) of this section within 10 days after the termination.

(d) An unarmed security ~~guard~~ officer shall make application to the Director for an unarmed registration card which the Director shall issue to ~~said~~ the applicant after receipt of the information required to be submitted by ~~his~~ the applicant's employer pursuant to subsection (a), and after meeting any additional requirements which the Board, in its discretion, deems to be necessary. The unarmed security ~~guard~~ officer registration card shall be in the form of a pocket card designed by the Board, shall be issued in the name of the applicant, and may have the applicant's photograph affixed thereto. The unarmed security ~~guard~~ officer registration card shall expire one year after its date of issuance and shall be renewed every year. The Board may require all registration holders to complete continuing education courses approved by the Board before renewal of their registrations. If an unarmed registered security ~~guard~~ officer is terminated by a licensee and changes employment to another security ~~guard~~ officer and patrol company, the security ~~guard's~~ officer's registration card shall remain valid, provided the security ~~guard~~ officer pays the unarmed ~~guard~~ officer registration transfer fee to the Board and a new unarmed security ~~guard~~ officer registration card is issued. An unarmed security ~~guard~~ officer whose transfer registration application and transfer fee have been sent to the Board may work with a copy of the transfer application until the registration card is issued.

(e) Notwithstanding the provisions of this section, a licensee may employ a person properly registered or licensed as an unarmed security ~~guard~~ officer in another state for a period not to exceed 10 days in any given month; provided the licensee, prior to employing the unarmed security ~~guard,~~officer, submits to the Director the name, address, and social security number of the unarmed ~~guard~~ officer and the name of the

state of current registration or licensing, and the Director approves the employment of the unarmed ~~guard~~ officer in this State.

(f) Repealed by Session Laws 2005-211, s. 1, effective July 20, 2005."

SECTION 5. G.S. 74C-12 reads as rewritten:

"**§ 74C-12. Denial, suspension, or revocation of license, registration, or ~~permit.~~permit; duty to report criminal arrests.**

(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit;

(2) Violated any provision of this Chapter;

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this Chapter;

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state;

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter;

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) Knowingly made any false report to the employer or client for whom information is being obtained;

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping;

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding;

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding;

(14) Failed to make the required contribution to the Private Protective Services Recovery Fund or failed to maintain the certificate of liability insurance required by this Chapter;

(15) Violated the firearm provisions set forth in this Chapter;

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter;

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent;

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271;

(20) Failed or refused to offer a report to a client within 30 days of the client's written ~~request;~~request after the client has paid for services rendered;

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause;

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter;

(23) Divulged to any person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or ~~his~~ district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client;

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority;

(25) Intemperate habits or lacks good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision;

(26) Advertised or solicited business using a name other than that in which the license was issued;

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a ~~private detective or private investigator~~law enforcement officer while licensed under the provisions of this Chapter as a private ~~investigator.~~investigator;

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board.

(b) The denial, revocation, or suspension of a license, registration, or permit by the Board shall be in writing, be signed by the Director of the Board, and state the grounds upon which the Board decision is based. The aggrieved person shall have the

right to appeal from this decision as provided in Chapter 150B of the General Statutes. The aggrieved person shall file the appeal within 60 days of receipt of the Board's decision.

(c) The following persons may not be issued a license, registration, or permit under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes.

(d) A licensee shall report to the Board in writing within 30 days any charge, arrest for, or conviction of a misdemeanor or felony for any of the following:

(1) Crimes that have as an essential element dishonesty, deceit, fraud, or misrepresentation.

(2) Illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage.

(3) Illegal use, carrying, or possession of a firearm.

(4) Acts involving assault.

(5) Acts involving unlawful breaking or entering, burglary, or larceny.

(6) Any offense involving moral turpitude.

For purposes of this section, the term 'conviction' includes the entry of a plea of guilty, a plea of nolo contendere, or a finding of guilt by a court of competent jurisdiction. The licensee's failure to report a charge, arrest for, or conviction of a misdemeanor or felony is grounds for revocation of the license."

SECTION 6. G.S. 74C-13 reads as rewritten:

"**§ 74C-13. Armed ~~security guard~~licensee or registered employee required to have firearm registration permit; ~~security guard~~firearms training.**

(a) It shall be unlawful for any person performing ~~the duties of an armed security guard~~private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications as set forth in this section and having been issued a firearm registration permit by the Board. For the purposes of this section, the following terms are defined:

(1) 'Armed private investigator' means a licensed private investigator who, at any time, wears, carries, or possesses a firearm in the performance of duty.

~~(1)~~(1a) "Armed security ~~guard~~"officer' means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of an armed security watchman; armed armored car service ~~guard;~~officer; armed alarm system company responder; ~~private detective;~~ or armed courier service ~~guard~~ officer who at any time wears, carries, or possesses a firearm in the performance of duty.

(2) "Contract security company" means any person, firm, association, or corporation engaging in a private protective services profession that provides services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(3) "Proprietary security organization" means any person, firm, association, or corporation or department thereof which employs security ~~guards,~~officers, alarm responders, armored car personnel, or couriers who are employed regularly and exclusively as an employee by an employer in connection with the business affairs of ~~such~~ the employer.

(b) It shall be unlawful for any person, firm, association, or corporation and its agents and employees to employ an armed security ~~guard~~ officer or an armed private investigator and knowingly authorize or permit ~~him~~ the armed security officer or armed private investigator to carry a firearm during the course of performing his or her duties as an armed security ~~guard~~ officer or an armed private investigator if the Board has not issued him or her a firearm registration permit under this section or if the person, firm, association, or corporation permits an armed security ~~guard~~ officer or an armed private investigator to carry a firearm during the course of performing his or her duties whose firearm registration permit has been suspended, revoked, or has otherwise expired:

(1) ~~An armed security guard~~ A firearm registration permit grants authority to the armed security ~~guard,~~officer or armed private investigator, while in the performance of his or her duties or traveling directly to and from work, to carry ~~a standard .38 caliber or .32 caliber revolver or any other~~any firearm approved by the Board and not otherwise prohibited by law. The use of any firearm not approved by the Board is prohibited.

(2) All firearms carried by authorized armed security ~~guards~~ officers in the performance of their duties shall be owned or leased by the employer. Personally owned firearms shall not be carried by an armed security ~~guard~~ officer in the performance of his or her duties.

(c) The applicant for ~~an armed security guard~~a firearm registration permit shall submit an application to the Board on a form provided by the Board.

(d) Each ~~armed security guard~~ firearm registration permit issued under this section to an armed security officer shall be in the form of a pocket card designed by the Board and shall identify the contract security company or proprietary security organization by whom the holder of the firearm registration permit is employed. ~~An armed security guard~~A firearm registration permit issued to an armed security officer expires one year after the date of its issuance and must be renewed annually unless the permit holder's employment terminates before the expiration of the permit. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(d1) Each firearm registration permit issued under this section to an armed private investigator shall be in the form of a pocket card designed by the Board and shall identify the name of the armed private investigator. A private investigator firearm registration permit expires one year from the date of issuance and shall be renewed annually. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(e) If ~~the holder of~~ an armed security ~~guard firearm registration permit~~officer terminates his or her employment with the contract security company or proprietary security organization, the firearm registration permit expires and must be returned to the Board within 15 working days of the date of termination of the employee.

(f) A contract security company or proprietary security organization shall be allowed to employ an individual for 30 days as an armed security ~~guard~~officer pending completion of the firearms training required by this Chapter, if the contract security company or proprietary security organization obtains prior approval from the Director. The Board and the Attorney General shall provide by rule the procedure by which an armed private investigator, a contract security ~~company~~company, or a proprietary security organization applicant may be issued a temporary firearm registration permit by the Director of the Board pending a determination by the Board of whether to grant or deny an applicant a firearm registration permit.

(g) The Board may suspend, revoke, or deny ~~an armed security guard~~a firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this section or rules promulgated by the Board to implement this section. The Director may summarily suspend ~~an armed security guard~~a firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against the holder of the permit.

(h) The Board and the Attorney General shall establish a firearms training program for ~~armed security guards~~licensees and registered employees to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General may approve training programs conducted by a contract security company and the security department of a proprietary security organization, if the contract security company or security department of a proprietary security organization offers the courses listed in subdivision (1) of this subsection and if the instructors of the training program are certified trainers approved by the Board and the Attorney General:

(1) The basic training course approved by the Board and the Attorney General shall consist of a minimum of four hours of classroom training which shall include:
   a. Legal limitations on the use of hand guns and on the powers and authority of an armed security ~~guard,~~officer;
   b. Familiarity with this ~~section,~~section;
   c. Range firing and procedure and hand gun safety and ~~maintenance,~~maintenance; and
   d. Any other topics of armed security ~~guard~~officer training curriculum which the Board deems necessary.

(2) An applicant for ~~an armed security guard~~a firearm registration permit must fire a minimum qualifying score to be determined by the Board and the Attorney General on any approved target course approved by the Board and the Attorney General.

(3) ~~An armed security guard~~A firearms registrant must complete a refresher course and shall requalify on the prescribed target course prior to the renewal of his or her firearm registration permit.

(4) The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this section.

(i) The Board may not issue ~~an armed security guard~~a firearm registration permit to an applicant until the applicant's employer submits evidence satisfactory to the Board that the applicant:

(1) Has satisfactorily completed an approved training course.

(2) Meets all the qualifications established by this section and by the rules promulgated to implement this section.

(3) Is mentally and physically capable of handling a firearm within the guidelines set forth by the Board and the Attorney General.

(j) The Board and the Attorney General are authorized to prescribe reasonable rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued ~~an armed security guard~~a firearm registration permit by the Board.

(k) All fees collected pursuant to G.S. 74C-9(e)(7) and (8) shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering the firearms provisions of this Chapter.

(l) The Board and the Attorney General shall establish a training program for certified trainers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board or the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(1) The Board and the Attorney General shall also establish renewal requirements for certified trainers. The Board may require all certified trainers to complete continuing education courses approved by the Board before renewal of their certifications.

(2) No certified firearms trainer shall certify ~~an armed security guard~~a licensee or registrant unless the ~~armed security guard~~licensee or registrant has successfully completed the firearms training requirements set out above in subsection (h) of this section.

(m) The Board and the Attorney General shall establish a training program for unarmed security ~~guards~~ officers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(n) A private investigator shall be permitted to carry a concealed weapon during the performance of his or her duties as a private investigator upon: (i) obtaining a concealed weapon permit issued pursuant to G.S. 14-415.11; (ii) successfully completing the firearms training course approved by the Board and the Attorney General; and (iii) having a notation affixed to the face of the firearms registration card designating that the armed private investigator is allowed to carry a concealed weapon.

A private investigator who does not carry a weapon during the course of his or her duties as a private investigator but who wishes to carry a concealed weapon while not engaged in private investigative duties shall be permitted to do so upon completion of the requirements set forth in Article 54B of Chapter 14 of the General Statutes."

SECTION 7. G.S. 74C-14 reads as rewritten:

"**§ 74C-14. Mace.**

It shall be lawful for security ~~guards~~ officers registered pursuant to the provisions of this Chapter to possess and use tear gas (mace) to the extent allowed under the provisions of G.S. 14-401.6."

SECTION 8. G.S. 74C-21 reads as rewritten:

"**§ 74C-21. Law enforcement officer provisions.**

(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security ~~guard~~ officer and patrol licensee under this Chapter.

(b) An off-duty law enforcement officer may be employed during his or her off-duty hours by a licensed security ~~guard~~ officer and patrol company on an employer-employee basis. An off-duty law enforcement officer shall not wear his or her police officer's uniform or use the police equipment while working for a security ~~guard~~ officer and patrol company.

(c) A law enforcement officer may provide security ~~guard~~ officer and patrol services on an individual employer-employee basis to a person, firm, association, or corporation that is not engaged in a security ~~guard~~ officer and patrol profession."

SECTION 9. Article 1 of Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-22. Continuing education.**

The Board may require individuals holding a license, registration, certificate, or permit to complete continuing education courses approved by the Board before renewal. The Board shall establish, by rule, the number of hours of continuing education necessary for renewal and any other requirements for completion of continuing education courses. The Board shall have the authority to approve continuing education courses and shall consider the continuing education course criteria, including the course curriculum, the qualifications of the instructor, the potential benefit to the industry, and any other criteria the Board deems appropriate."

SECTION 10. G.S. 74C-30 reads as rewritten:

"**§ 74C-30. Private Protective Services Recovery Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services Recovery Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. Said Fund shall be used in the manner provided in this Article for the payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.

(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the

repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

~~(1) On July 1, 1983, the Board shall charge every licensee and trainee possessing a license or trainee permit on that date a fee of fifty dollars ($50.00);~~

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars ($100,000);~~twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to ~~one hundred thousand dollars ($100,000).~~twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from ~~such~~ the investments shall be deposited to the credit of the Fund. The Board in its discretion, may use any and all of the proceeds from ~~such~~ the investments or funds that exceed twenty-five thousand dollars ($25,000) for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the industry;

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees and trainees; and

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: 'The course is being given in whole or in part by a grant from the Private Protective Services Board.'

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 11. G.S. 74C-31(d) reads as rewritten:

"(d) Until ~~such time as~~ the Fund reaches ~~one hundred thousand dollars ($100,000);~~twenty-five thousand dollars ($25,000), or at any time the Fund has insufficient assets in excess of ~~one hundred thousand dollars ($100,000)~~twenty-five thousand dollars ($25,000) to pay outstanding claims, the State Treasurer shall not disburse any payments to an aggrieved party. However, any party aggrieved and awarded payment as ordered by the Board which order is dated after July 1, 1983, shall hold a vested right for payment plus interest as provided in G.S. 24-1 once the Fund reaches a sufficient level for payments. Authorized payments which cannot be made due to the lack of funds will be paid as funds become available, beginning with those payments which have been unsatisfied for the longest period of time."

SECTION 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1243

Committee Substitute Favorable 5/15/07
Third Edition Engrossed 5/16/07

Short Title: Courtroom Procedures/Juvenile Proceedings. (Public)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE A PROCEDURE BY WHICH DETERMINATION IS MADE TO RESTRAIN JUVENILES IN THE COURTROOM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 24 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-2402.1. Restraint of juveniles in courtroom.**

At any hearing authorized or required by this Subchapter, the judge may subject a juvenile to physical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the juvenile's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the juvenile and the juvenile's attorney an opportunity to be heard to contest the use of restraints before the judge orders the use of restraints. If restraints are ordered, the judge shall make findings of fact in support of the order."

SECTION 2. This act becomes effective October 1, 2007, and applies to all hearings conducted on or after that date.

HOUSE BILL 1243:
Courtroom Procedures/Juvenile Proceedings

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 6, 2007
Introduced by:	Reps. Bryant, Bordsen, Wainwright, Mobley	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	Third Edition		

SUMMARY: ***House Bill 1243 would provide that with regard to hearings authorized or required for undisciplined and delinquent juveniles, a juvenile may only be placed in restraints in the courtroom if it is reasonably necessary to maintain order, prevent escape, or provide for the safety of the courtroom.***

CURRENT LAW: The statutes currently do not address the circumstances under which a juvenile may be restrained in the courtroom during juvenile proceedings. For adult defendants, G.S. 15A-1031 provides that a trial judge may order a defendant subject to physical restraint in the courtroom if it is reasonably necessary to maintain order, prevent escape, or provide for the safety of persons. If the defendant is ordered to be restrained, the judge must do all of the following:

- Enter in the record, out of the presence of the jury, the reasons for the restraint.
- Give the defendant an opportunity to object.
- Instruct the jurors that the restraint is not to be considered in weighing evidence or determining guilt.

The judge must conduct a hearing and make findings of fact if the defendant objects to the judge's reasons for restraint.

BILL ANALYSIS: House Bill 1243 would provide a procedure (similar to what is provided for adults under G.S. 15A-1031) to determine when a juvenile may be subject to restraint in the courtroom during hearings authorized or required for undisciplined and delinquent juveniles (hearings held pursuant to Subchapter II of Chapter 7B of the General Statutes). A judge would be authorized to subject the juvenile to restraint only when it is reasonably necessary to maintain order, prevent escape, or provide for the safety of the courtroom. The judge would be required, whenever practical, to provide the juvenile and the juvenile's attorney an opportunity to contest the use of restraints before they are ordered, and, if they are ordered, the judge would be required to make findings of fact to support that decision.

EFFECTIVE DATE: The bill would become effective October 1, 2007.

Wendy Graf Ray, counsel to the House Juvenile Justice Committee, and Susan Sitze, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1243e3-SMRI

HOUSE BILL 1634
Second Edition Engrossed 5/15/07

Short Title:	Custody/Visitation/Military Orders.	(Public)
Sponsors:	Representatives Martin, Goodwin, Hall, Moore (Primary Sponsors); Brown, Fisher, Glazier, Harrison, Hurley, and Ross.	
Referred to:	Homeland Security, Military and Veterans Affairs, if favorable, Judiciary I.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CUSTODY, VISITATION, EXPEDITED HEARING, AND ELECTRONIC COMMUNICATIONS PROCEDURES WHEN A PARENT RECEIVES MILITARY TEMPORARY DUTY, DEPLOYMENT, OR MOBILIZATION ORDERS.

Whereas, currently there are six major military bases in North Carolina; and

Whereas, the military population of this State is the fourth largest in the nation, with active-duty service members numbering over 100,000; and

Whereas, temporary duty, the deployment of an active-duty service member, or the mobilization of a member of the National Guard or Reserves, sometimes with little advance notice, can have a disruptive effect on custody or visitation arrangements involving minor children of service members; and

Whereas, service members should be protected, as should their minor children, from the loss of custodial arrangements and disruption of family contact due to the service member's absence pursuant to military orders for temporary duty, deployment, or mobilization; and

Whereas, other members of a service member's family, such as parents or current spouses, can provide love, comfort, care, and continuity to the service member's child through delegated visitation when a service member is absent due to military orders; and

Whereas, the regular scheduling of hearings may be harmful to the interest of service members who, due to military orders, may need to have an expedited hearing or may need to use electronic means to give testimony when they cannot appear in person in court; and

Whereas, the use of expedited hearings and testimony by electronic means, at the request of the service member who is absent or about to depart, would aid and

promote fair, efficient, and prompt judicial processes for the resolution of family law matters; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.7(a) reads as rewritten:

"(a) ~~An~~ Except as otherwise provided in G.S. 50-13.7A, an order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested."

SECTION 2. Article 1 of Chapter 50 of the General Statutes is amended by adding a new section to read:

"**§ 50-13.7A. Custody and visitation upon military temporary duty, deployment, or mobilization.**

(a) Purpose. – It is the purpose of this section to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent receives temporary duty, deployment, or mobilization orders from the military.

(b) Definitions. – As used in this section:

(1) The term 'deployment' means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.

(2) The term 'mobilization' means the call-up of National Guard or Reserve service member to extended active duty status. For purposes of this definition, 'mobilization' does not include National Guard or Reserve annual training.

(3) The term 'temporary duty' means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(c) Custody. – When a parent who has custody, or has joint custody with primary physical custody, receives temporary duty, deployment, or mobilization orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise custody responsibilities:

(1) Any temporary custody order for the child during the parent's absence shall end no later than 10 days after the parent returns; and

(2) The temporary duty, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer custody from the service member.

(d) Visitation. – If the parent with visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance

from the parent's residence or otherwise have a material effect on the parent's ability to exercise visitation rights, the court may delegate the parent's visitation rights, or a portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating visitation rights is in the child's best interest.

(e) Expedited Hearings. – Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(f) Electronic Communications. – Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance notice and for good cause shown, allow the parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic means' includes communication by telephone, video teleconference, or the Internet."

SECTION 3. This act becomes effective October 1, 2007, and applies to custody or visitation actions instituted on or after that date.

HOUSE BILL 1634:
Custody/Visitation/Military Orders

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 6, 2007
Introduced by:	Reps. Martin, Goodwin, Hall, Moore	**Summary by:**	Jennifer McGinnis
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1634 would amend the law relating to custody and visitation when a custodial parent is mobilized or otherwise receives military orders that require the parent to move temporarily away from the residence. The bill would become effective on October 1, 2007, and apply to custody or visitation actions instituted on or after that date.***

CURRENT LAW: The statutes do not have specific guidelines for a court in addressing custody and visitation issues when a custodial parent receives temporary duty, deployment, or mobilization orders.

BILL ANALYSIS: The bill would create a new section in Chapter 50, to specifically address the situation when a custodial parent is put on temporary duty, mobilized, or deployed on military orders. The bill includes definitions and the following substantive provisions:

- **Custody**- The court must apply specific rules when there is a material effect on a parent's ability to exercise custodial responsibilities, including both of the following:
    - **Any temporary custody order for the child during the parent's temporary duty, mobilization, or deployment must end no later than 10 days after the parent returns.**
    - **Deployment not a factor in change of circumstances determination** - If a motion to transfer custody from a service member is filed, the temporary duty, mobilization, or deployment is excluded as a factor in making a change of circumstances determination. Under existing law, a showing of change circumstances is required in order for a court to modify or vacate a custody order.
    - **Delegation of visitation rights** - If a parent with visitation rights receives temporary duty, mobilization, or deployment orders, then a court may delegate the parent's visitation rights to a family member if it is in the child's best interest.
- **Expedited hearings** - Upon motion of a parent who has received temporary duty, mobilization, or deployment orders, and for good cause shown, a court must expedite a hearing for custody and visitation matters.
- **Testimony and evidence by electronic means** - Upon motion of a parent who has received temporary duty, mobilization, or deployment orders, for good cause shown, and upon reasonable notice a court must allow a parent in custody and visitation matters to present testimony and evidence by electronic means if the parent's military duties have a material effect on their ability to appear at a hearing.

EFFECTIVE DATE: The bill would become effective on October 1, 2007, and apply to custody or visitation actions instituted on or after that date.

BACKGROUND: State law requires that a court consider all facts in a case and decide custody issues in accordance with the best interests of the child. See G.S. 50-13.2 on reverse.

§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child.

Hal Pell, counsel to the House Homeland Security, Military and Veterans Affairs Committee, and Brad Krehely, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1634e2-SMRI

journalnow
Your guide to life in Northwest NC

Parental Duty

Winston-Salem Journal
Monday, May 14, 2007

When duty calls and those in the military are deployed, they risk life, limb and the loss of considerable income. They shouldn't risk losing custody of their children, too.

There are 140,000 single parents in America's military today. Some of them have been returning from duty in Iraq, Afghanistan and other inhospitable places to find that they've lost custody of their children.

Maybe it was a mom who was abroad for year and left her children with their dad. By the time she returned home, the father had petitioned for primary custody of the children. Or maybe a dad went overseas and with him went all of the visitation rights that his parents had with their grandchildren. If the mother doesn't want to cooperate, she doesn't have to.

Federal law does a great deal to protect the rights of deployed service members. It does not, however, get into child custody, a matter in the purview of the states.

Across the country, as the wars in Iraq and Afghanistan grind on and require repeat deployments of some service members, some non-deployed parents have sought to improve their custody arrangements.

This is not the easy issue that it appears to be on the surface. Courts in child custody and visitation cases are obligated to give the best interests of the children their primary consideration. It is entirely feasible that a court will, upon reopening a custody case, decide that a child will be better served by living in a stable home, where one of the parents is always there, over another home where a parent is repeatedly shipped off to war for a year or more at a time.

A number of states are trying to address the problem. They have to strike a delicate balance between what is fair to the service member and what is best for the child.

Legislation scheduled for a vote before the North Carolina House tonight appears to strike that balance well. The bill, sponsored by an Afghanistan veteran, Rep. Grier Martin of Raleigh, says that there is a presumption, in court, that it is in the best interests of the child that the custody arrangements that existed before deployment will be re-employed when the parent returns from duty. It also gives a departing service member the right to assign visitation privileges to a family member while he or she is gone.

This bill maintains North Carolina's commitment to putting the best interests of the child first. But it also protects those who have been deployed and gives them a strong legal position should the other parent seek a change in the original order.

North Carolina likes to think of itself as a military friendly state. Passage of this bill would be one more piece of proof to that effect.

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SITE SERVICES

Posted on Tue, May. 29, 2007

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"I SHOULDN'T HAVE HAD TO LEAVE BEFORE THEY (HER UNIT) DID. I HAD TO. I MEAN, WE'RE TALKING ABOUT MY SON." MARY HOLLINGSWORTH

Mom's choice: Her country or her child

Law doesn't protect soldiers in custody cases.

MIKE DRUMMOND
mdrummond@charlotteobserver.com

Mary Hollingsworth donned her uniform, stowed her gear and prepared for the long plane ride to the front.

This time, the N.C. Army National Guard specialist wouldn't fight for country -- she'd fight for custody of her 5-year-old son in a Gaston County courtroom.

National Guard soldiers are waging custody battles while deployed -- prompting some states, including North Carolina, to draft bills to ease this burden.

Judges are compelling many of these soldiers to rush home, and commanders are complaining the court skirmishes could endanger battlefield readiness.

Hollingsworth, 27, thought she was covered. She left her son with her mother; the three live together in Dallas, N.C. But the family care plan she and all service members are required to complete did not rewrite existing visitation and custody orders.

Deployed soldiers typically lose when they can't or won't appear at custody or visitation hearings, an Observer review shows. Many, like Hollingsworth,

GARY O'BRIEN / Observer staff
National Guard solider Mary Hollingsworth of Dallas, N.C., with her son at a welcome-home ceremony. She came home early to fight for custody of him.

- **Interactive report** | Full 505th series
- N.C. bill protects military custodial rights

THE SERIES

The 505th Engineer Battalion traces its origins to the storied "Old Hickory" 30th Infantry Division. The unit is based in Gastonia with posts in Kings Mountain, Shelby, Mooresville, North Wilkesboro and Warrenton. In Iraq, the men and women of the 505th built barracks, repaired bomb-damaged roads, fought off dozens of insurgent attacks and rode in 2,000 convoys -- without a fatality.

Sunday: How some employers fail citizen-soldiers.

Monday: Every day is Memorial Day for the 505th.

Today: Fighting custody battles while overseas.

Wednesday: War's stress comes home.

have to make a choice -- their country or their kids.

While she was dispensing weapons at Camp Anaconda outside Balad, Iraq, the boy's father, Victor Diaz Jr., was in court. In legal papers, he portrayed Hollingsworth as more interested in playing soldier than being a mother. He wanted custody.

Diaz's legal action triggered urgent e-mails among lawyers, Army officials and Hollingsworth, who persuaded commanders to ship her home early.

Omission in law

The Servicemembers Civil Relief Act protects soldiers on active duty from civil proceedings, including bankruptcy, evictions and foreclosures. Custody cases are not mentioned.Deployed service members are entitled to a mandatory 90-day delay of proceedings, longer if a judge deems necessary. Judges routinely delay debt collections. Not so with child visitation and custody.

An Observer review of 31 court cases nationwide shows judges almost always side with the parent standing in front of them.

"Judges are ignoring the SCRA, saying, `I'll be darned if I'll let a federal statute I've never heard of tie my hands,' " says Mark Sullivan, a Raleigh lawyer and author of "The Judges' Guide to the Servicemembers Civil Relief Act."

Unlike the lease payments on a Ford Mustang, Sullivan says, a child "can't be put into a state of suspended animation" until Mom or Dad returns.

He notes that judges "find it nearly impossible to support" delaying a custody case under the SCRA, "regardless of how unfair it might seem to have the hearing without the presence of the service member."

How it began

Mary Hollingsworth met Victor Diaz while both were in the Army in Alaska.

They never married, and split by the time their son was born in fall 2001. Hollingsworth -- her Guard buddies call her "Holly" -- returned to North Carolina to live with her mother.

Diaz, after he pleaded no contest in 2001 to military charges of possession of marijuana and ecstasy, was honorably discharged and ended up in Florida. He saw his son a few weeks a year, although he is entitled to more time under a visitation order.

Diaz is reed-thin, speaks in a whisper, and -- since 2003 -- is born again. He spurned Hollingsworth's offer to live rent-free in a house nearby. "God hasn't called me to North Carolina," he said.

He came to North Carolina last July, while Hollingsworth was in Iraq. He petitioned a judge for eight weeks of visitation, allowed in a court order. Diaz, 26, also pressed for full custody.

In court papers, Diaz argued he didn't know when Hollingsworth would return from Iraq. And the boy was living with Hollingsworth's mother. To Diaz, all this added up to a "substantial change of circumstance" that allowed him to claim custody.

Rather than evoke the SCRA and delay proceedings for 90 days, Judge Dennis Redwing let Diaz take the boy for eight weeks and scheduled a custody hearing. Diaz had until mid-September to return the boy -- two weeks after school started, and a violation of the visitation order.

Diaz retrieved the boy from a day care center. He tried to borrow a car seat from Hollingsworth's mother, who sent Mary an e-mail alerting her.

Half a world away, Hollingsworth enlisted help from higher-ups in the 505th Engineer Battalion to get her home.

Capt. Cale Moody e-mailed Hollingsworth's lawyers in August.

"Obviously, everyone is ignoring the (SCRA)," Moody wrote. "Therefore, she needs to return home as soon as possible to take care of this situation. However, we are somewhat busy fighting a war and in order to send Hollingsworth home we need proof of a hard date of when the custody hearing will be."

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Hollingsworth's lawyers got another Gaston County judge to order Diaz to bring the boy to North Carolina by the first day of school, Aug. 28.

Hollingsworth's commanders gave her permission to come home in early September, about a month before her unit.

"I shouldn't have had to leave before they did (her unit)," she said. "I had to. I mean, we're talking about my son."

Judge: `I had no choice'

Redwing disagrees."I don't think it was my purview to evoke the SCRA," he told the Observer. "I had no choice. The natural parent was claiming custody.

"No one's rights were trampled on," Redwing said, adding that Hollingsworth didn't have to return early. "That was her doing."

Hollingsworth appeared at the custody hearing in October. Redwing ordered mediation to resolve visitation arrangements.

"If she didn't come back, she would have lost custody," said Larry Langson, one of her lawyers. Diaz, he noted, "lost his case when she came back."

Fight may not be over

Diaz says the drug charges were a youthful indiscretion, a mistake he says he has put in the past. He recently re-enlisted in the Army. He's at Fort Jackson in Columbia and hopes to remain stationed in the Carolinas, he said, "to be closer to my son."

Hollingsworth now works full-time for the National Guard in Charlotte and is studying to be a paralegal. She and her son still live with her mother in Dallas. She has vowed to curtail Diaz's visitation, even if it means more court hearings.

"All the money I had saved serving in Iraq," she said, "went to pay the lawyer's bill."

What's Protected

The Servicemembers Civil Relief Act of 2003 postpones civil obligations so troops can devote their attention to duty and relieve stress on family. If military duty prevents them from appearing in court, judges must delay proceedings for 90 days. Judges can grant more time. The SCRA can't be used to avoid contract obligations.

The act postpones:

- Credit card debt.
- Mortgage payments.
- Pending trials.
- Taxes.
- Lease terminations.

SOURCE: Defense Department

Mike Drummond: 704-358-5248

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 12, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 765	Test. Additions to Trusts/Will References.	Representative Ross
HB 775	Revise Simultaneous Death Act.	Representative Ross
SB 1477	Inherently Dangerous Animals.	Senator Jones

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 12, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 765	Test. Additions to Trusts/Will References.	Representative Ross
HB 775	Revise Simultaneous Death Act.	Representative Ross
SB 1477	Inherently Dangerous Animals.	Senator Jones

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

June 12, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 12, 2007, with ten members present. Senator Hartsell introduced pages Nathan Sanders, Aaron Jones, Kelsey Knight, Swazoo Claybon III and Jowette Brown-Holmes and thanked them for their service.

HB 765 (Test.Additions to Trust/Will References.) Senator Hartsell recognized Representative Ross to explain the bill. Professor Jim McLaughlin from Campbell University School of Law was recognized to give additional explanation. Questions from Senators Bingham and Goodall were answered by Representative Ross and Professor McLaughlin. Senators Apodaca and Queen moved for a favorable report. All voted and the motion carried.

HB 775 (Revise Simultaneous Death Act.) Representative Ross was recognized to explain the bill. Ms. Bly Hall, representing the General Statutes Commission, gave additional explanation. Senator Queen moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-12-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Maxwell	Wachovia Bank
Jim McLaughlin	Campbell University School of Law
John Phelps	NCLM
[signature]	AOC
P. Bailey Hall	General Statutes Com
John McKay	GOODMICE
Kevin Leonard	WCSR
Penny Griffin	Daily Bulletin
Linder Gwinn	Staff
[signature]	Bone + Assoc
[signature]	MWC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DOUG HERON	NC BAR ASSN

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 12, 2007

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

FAVORABLE

H.B.(CS #1) **765** Test. Additions to Trusts/Will References.
Sequential Referral: None
Recommended Referral: None

H.B. **775** Revise Simultaneous Death Act.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 765*
Committee Substitute Favorable 4/4/07

Short Title: Test. Additions to Trusts/Will References. (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE LAW REGARDING TESTAMENTARY ADDITIONS TO TRUSTS, AND TO CODIFY THE DOCTRINES OF INCORPORATION BY REFERENCE AND ACTS OF INDEPENDENT SIGNIFICANCE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 31 of the General Statutes reads as rewritten:

"Article 8.

"~~Devise or Bequest to Trustee of an Existing Trust.~~ Testamentary Additions to Trusts.

"**§ 31-47. ~~Devise or bequest to trustee of an existing trust.~~Testamentary additions to trusts.**

~~A devise or bequest in a will duly executed pursuant to the provisions of this Chapter may be made in form or substance to the trustee of any trust, including an existing testamentary trust, if established in writing prior to the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable or both by the settlor or any other person or persons; nor because the trust instrument or any amendment thereto was not executed in the manner required for wills, nor because the trust was amended after execution of the will. Unless the will provides otherwise, such devise or bequest shall operate to dispose of property under the terms of the trust as they appear in writing at the testator's death and the property shall not be deemed held under a testamentary trust. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.~~

(a) A will may validly devise property to:

(1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or

(2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written

instrument executed before or concurrently with the execution of the testator's will, regardless of the existence, size, or character of the corpus of the trust during the testator's lifetime.

The devise is not invalid because the trust is amendable or revocable, or because the trust instrument or any amendment thereto was not executed in the manner required for wills, or because the trust was amended after the execution of the testator's will or after the testator's death. A revocable trust to which property is first transferred under subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

(b) Unless the testator's will provides otherwise, property devised to the trustee of a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) A devise to a trust shall be construed as a devise to the trustee of that trust.

(e) For purposes of this section, "devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(f) Nothing in this section alters, amends, or in any manner affects the application of the doctrine of acts of independent significance."

SECTION 2. Chapter 31 of the General Statutes is amended by adding a new Article to read:

"Article 9.

"Incorporation by Reference; Acts of Independent Significance.

"**§ 31-51. Incorporation by reference.**

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

"**§ 31-52. Acts and events of independent significance.**

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. These acts and events may include the execution or revocation of another individual's will and the safekeeping of items in a secured depository."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to Sections 2-510 (Incorporation by Reference), and 2-511 (Testamentary Additions to Trusts) of the Uniform Probate Code and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective when it becomes law and applies to estates of decedents dying on or after that date regardless of when the will or instrument was executed.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
May 25, 2007

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **House Bill 765 (Test. Additions to Trusts/Will References)**

Section 1 of this bill amends G.S. 31-47 to update the law on leaving property to an existing trust by will ("testamentary additions" to trusts). The amendments are based partly on Section 2-511 of the Uniform Probate Code. G.S. 31-47 currently permits a testator to devise property to the trustee of any trust established before the testator's will is executed. Section 1 permits a devise to a trust when the trust instrument is executed concurrently with the testator's will. Section 1 clarifies that the trust need not have been funded during the testator's lifetime; the devise under the testator's will suffices. This removes the need to fund these trusts with token amounts of money (e.g., five dollars). Section 1 further specifies that such a trust, if revocable, is an inter vivos trust, not a testamentary trust, and that it is subject to Article 6 of Chapter 36C of the General Statutes (Revocable Trusts) from the date the trust instrument is executed. The section also makes stylistic and other minor clarifying changes.

Section 2 adds a new Article 9 to Chapter 31 of the General Statutes (Wills). The Article is based on Section 2-510 (Incorporation by Reference) and Section 2-512 (Events of Independent Significance) of the Uniform Probate Code. **Proposed § 31-51** codifies the common law doctrine of incorporation by reference. Under this doctrine, a will may incorporate by reference a separate writing, in existence at the date of the execution of the will, if both the intent to incorporate and a sufficient identification of the writing appear in the language of the will. **Proposed § 31-52** codifies the common law doctrine of independent significance. Under this doctrine, a will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. One example is the execution or revocation of another individual's will.

Section 3 authorizes the printing of official and drafters' comments.

Section 4 provides that the act is effective when it becomes law and applies to estates of decedents dying on or after that date regardless of when the will or instrument was executed.

HOUSE BILL 775*

Short Title:	Revise Simultaneous Death Act.	(Public)
Sponsors:	Representatives Ross; Alexander and Hurley.	
Referred to:	Judiciary I.	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM SIMULTANEOUS DEATH ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 24 of Chapter 28A of the General Statutes reads as rewritten:

"Article 24.

"~~Uniform~~ 120-Hour Survivorship Requirement; Revised Simultaneous Death Act.

"**§ 28A-24-1. ~~Disposition of property where no sufficient evidence of survivorship.~~ Definitions.**

~~Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Article.~~

In this Article:

(1) "Co-owners with right of survivorship" includes joint tenants in a joint tenancy with right of survivorship, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with a POD designation, pension, profit sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

"§ 28A-24-2. ~~Beneficiaries of another person's disposition of property.~~ **Requirement of survival by 120 hours.**

(a) ~~Other than as provided in subsection (b) below, if property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person and both persons die, and there is no sufficient evidence that the two have died other than simultaneously, the beneficiary shall be deemed not to have survived.~~ Except as otherwise provided in this Article, where the title to property, the devolution of property, the right to elect an interest in property, or any other right or benefit depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by at least 120 hours is deemed to have predeceased the other individual.

(b) ~~If property is so disposed of that it is to be distributed among such members of a class as survive another person and there is no sufficient evidence that one or more members of the class and such other person died other than simultaneously, each member of the class so dying will be deemed to have survived such other person.~~ If the language of the governing instrument disposes of property in such a way that two or more beneficiaries are designated to take alternatively by reason of surviving each other and it is not established by clear and convincing evidence that any such beneficiary has survived any other such beneficiary by at least 120 hours, the property shall be divided into as many equal shares as there are alternative beneficiaries, and these shares shall be distributed respectively to each such beneficiary's estate.

(c) ~~If property is so disposed of that its disposition depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries who would have taken the whole property if they had survived and such portions shall be distributed respectively to each such beneficiary.~~ If the language of the governing instrument disposes of property in such a way that it is to be distributed to the member or members of a class who survived an individual, each member of the class will be deemed to have survived that individual by at least 120 hours unless it is established by clear and convincing evidence that the individual survived the class member or members by at least 120 hours.

"§ 28A-24-3. ~~Joint tenants or tenants by the entirety.~~**Co-owners with right of survivorship; requirement of survival by 120 hours.**

~~(a) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property shall be distributed one half as if one had survived and one half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.~~

~~(b) For the purpose of this section, the term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.~~

Except as otherwise provided in this Article, (i) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least 120 hours, one-half of the property passes as if one had survived by at least 120 hours and one-half as if the other had survived by at least 120 hours and (ii) if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of them survived the others by at least 120 hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.

"§ 28A-24-4. ~~Insurance policies.~~ Survival of an event; 120-hour period not applicable.

~~Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.~~

For purposes of a governing instrument that requires survival of an event, other than the death of another individual, the 120-hour survivorship requirement of this Article does not apply.

"§ 28A-24-5. ~~Article does not apply if decedent provides otherwise.~~ Victim deemed to survive slayer.

~~This Article shall not apply in the case of wills, living trusts, deeds, contracts of insurance, or any other situation wherein provision has been made for distribution of property different from the provisions of this Article, or wherein provision has been made for a presumption as to survivorship which results in a distribution of property different from that herein provided.~~

Notwithstanding any other provisions of this Article, solely for the purpose of determining whether the victim is entitled to any right or benefit that depends on surviving the death of a slayer under G.S. 31A-3, the slayer is deemed to have predeceased the victim and the victim is deemed to have survived the slayer by at least 120 hours (or any greater survival period required of the victim under the slayer's will or other governing instrument) unless it is established by clear and convincing evidence that the slayer survived the victim by at least 120 hours.

"§ 28A-24-6. ~~Uniformity of interpretation.~~Exceptions to the 120-hour survival requirement.

~~This Article shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.~~

Survival by 120 hours is not required if any of the following apply:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and the language is operable under the facts of the case.

(2) The governing instrument expressly indicates that an individual is not required to survive the death of another individual by any specified period or expressly requires the individual to survive another individual for a specified period; but survival must be established by clear and convincing evidence.

(3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under G.S. 41-15; but survival must be established by clear and convincing evidence.

(4) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

(5) The application of a 120-hour requirement of survival would deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or testator or other person (or their estate) as the transferor of any property. "Tax" includes any federal or State gift, estate or inheritance tax.

(6) The application of a 120-hour requirement of survival would result in an escheat.

"§ 28A-24-7. ~~Short title.~~ Evidence of death or status.

~~This Article may be cited as the Uniform Simultaneous Death Act.~~

For purposes of this Article, the following rules of evidence apply relating to the determination of death and status of a beneficiary subject to a requirement of survivorship and of the person the beneficiary must survive:

(1) Death occurs when an individual is determined to be dead pursuant to G.S. 90-323 or Chapter 28C of the General Statutes.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency in the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. In the absence of evidence disputing the death certificate, that certificate shall be conclusive evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report. The record or report is conclusive evidence of the status and of the dates, circumstances, and places disclosed by the record or report unless there is evidence to the contrary.

(4) In the absence of prima facie evidence of death under subdivision (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

"§ 28A-24-8. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a

governing instrument who, under this Article, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this Article. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this Article.

Written notice of a claimed lack of entitlement under this Article must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this Article, a payor or other third party may pay any amount owed or transfer or deposit any item of property other than tangible personal property held by it to or with the clerk of the superior court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the clerk of the superior court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The clerk shall hold the funds or item of property and, upon the clerk's determination under this Article, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the clerk discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the clerk.

(b) A person who purchases property for value and without notice, or who received a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this Article to return the payment, item of property, or benefit, nor liable under this Article for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this Article is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this Article."

SECTION 2. G.S. 29-13 reads as rewritten:

"**§ 29-13. Descent and distribution upon ~~intestacy.~~ intestacy; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.**

(a) All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Chapter.

(b) The determination of whether an heir has predeceased a person dying intestate shall be made as provided by Article 24 of Chapter 28A of the General Statutes."

SECTION 3.(a) The catch line of G.S. 31-42 reads as rewritten:

"§ 31-42. Failure of devises by lapse or otherwise; ~~renunciation.~~ renunciation; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A."

SECTION 3.(b) G.S. 31-42 is amended by adding a new subsection to read:

"(c1) The determination of whether a devisee has predeceased the testator shall be made as provided by Article 24 of Chapter 28A of the General Statutes."

SECTION 4. G.S. 31A-14 reads as rewritten:

"**§ 31A-14. ~~Uniform~~ Revised Simultaneous Death Act not applicable.**

The ~~Uniform~~ Revised Simultaneous Death Act, ~~G.S. 28A-24-1 through G.S. 28A-24-7,~~ Article 24 of Chapter 28A of the General Statutes, shall not apply to cases governed by this Chapter."

SECTION 5. This act becomes effective October 1, 2007, and applies to determinations of title to or devolution of property dependent upon the death of an individual occurring on or after that date.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
May 25, 2007

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **House Bill 775 (Revise Simultaneous Death Act)**

General Comments

This bill is based on the revised Uniform Simultaneous Death Act as approved in 1991 and amended in 1993 by the National Conference of Commissioners on Uniform State Laws. The bill revises Article 24 of Chapter 28A of the General Statutes ("Uniform Simultaneous Death Act"), which provides default rules governing the disposition of property when the disposition depends upon the priority of death of two or more persons who apparently died at the same time. The current Act generally provides that, where there is "no sufficient evidence" that two or more persons have died otherwise than "simultaneously" and the title to property or the devolution of property depends upon the order of their deaths, the property of each person is distributed as if that person had survived the other.

The bill extends the current Act to situations in which there is sufficient evidence that one individual survives the other, but the period of survival is insubstantial. The bill imposes a 120-hour survival requirement, so that a person who fails to survive another person by at least 120 hours is deemed to have predeceased the other person. This is a default requirement that may be changed in, for example, a person's will. The bill also replaces the "no sufficient evidence" standard of proof with a "clear and convincing evidence" standard of proof, thereby requiring that survival by at least 120 hours must be shown by clear and convincing evidence. To date, approximately 24 states and the District of Columbia have adopted the 120-hour survival requirement.

Although imposition of the 120-hour survival requirement would in some cases result in the eventual takers of property being different from those under current law, the requirement avoids delay due to, and the costs of, multiple estate administrations to pass the same property and prevents the property from passing to persons who never enjoyed the property or to persons not desired by the initial decedent.

Specific Comments

Section 1. This section of the bill revises Article 24 of Chapter 28A of the General Statutes to adopt the 120-hour survival requirement and other provisions of the revised Uniform Simultaneous Death Act.

§ 28A-24-1. This section, as rewritten, defines the following key terms: "co-owners with right of survivorship," "governing instrument," and "payor." The substance of the current § 28A-24-1 is now covered by § 28A-24-2.

§ 28A-24-2. This section, as rewritten, brings forward the substance of current § 28A-24-1 and § 28A-24-2 with clarifying changes and the incorporation of the 120-hour survival requirement and the clear and convincing evidence standard of proof.

§ 28A-24-3. This section, as rewritten, deals with property held by "co-owners with right of survivorship" as defined in § 28A-24-1. As rewritten, the section incorporates the 120-hour survival requirement and the clear and convincing evidence standard of proof and replaces the current provisions dealing with property held by joint tenants with right of survivorship or tenants by the entirety.

§ 28A-24-4. This section currently applies to insurance policies, which are covered by the general provisions of revised § 28A-24-2. As rewritten, the section restricts the application of the 120-hour survival requirement to surviving the death of another individual; it does not apply to a requirement that an individual survive a different type of event (e.g., marriage).

§ 28A-24-5. This section, which creates a special exception to the 120-hour survival requirement dealing primarily with murder-suicides, replaces the current section that specifies situations under which the current Act does not apply. The substance of the current section is now covered by § 28A-24-6.

North Carolina's slayer statute already prevents a slayer from inheriting from the victim. As rewritten, § 28A-24-5 allows a victim who either dies first or survives by less than 120 hours to inherit from the slayer unless the slayer survives the victim by at least 120 hours. The provision applies to any right or benefit to which the victim would have been entitled if the victim had survived the slayer.

For example, a husband shoots his wife and then himself. The husband dies instantly, intestate, and the wife dies the next day in the hospital. Under this section, the wife is deemed to have survived the husband by at least 120 hours and, as an heir of the husband, is entitled to share in his estate, consistent with current law. If the wife in the example dies instantly and the husband dies the next day, he is deemed to have predeceased her, she is deemed to have survived him by at least 120 hours, and she is entitled to a share in his estate, which is a different result from the current law.

§ 28A-24-6. This section, as rewritten, provides that the 120-hour survival requirement does not apply if there is a governing instrument (e.g., a will) that provides otherwise, or if the requirement would:

- Cause a nonvested property interest or a power of appointment to fail to qualify for validity under G.S. 41-15 ("Uniform Statutory Rule Against Perpetuities").
- Result in an unintended failure or duplication of a disposition.
- Deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction or credit.

- Result in an escheat of the property.

§ 28A-24-7. This section, as rewritten, provides the following rules of evidence relating to the determination of death and status of a beneficiary subject to a requirement of survivorship and of the individual the beneficiary must survive:

- Death occurs when a determination of death is made by a physician under G.S. 90-323, the North Carolina brain death statute, or when a missing person is decreed to be dead in an action under Chapter 28C of the General Statutes.

- A certified or authenticated copy of a death certificate is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. In the absence of evidence disputing the death certificate, the certificate is conclusive evidence of the fact, place, date, and time of death and the identity of the decedent.

- A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report. The record or report is conclusive evidence of the status and of the dates, circumstances, and places disclosed by the record or report unless there is evidence to the contrary.

- In the absence of a death certificate or one of the other governmental records described in § 28A-24-7(3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

§ 28A-24-8. This section, which is new, provides protection to payors and other third parties who, before receiving written notice of a claimed lack of entitlement (failure of survivorship) under the Act, pay off or in other ways rely on a survivor's apparent entitlement to succeed to property. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under the Act. The section also provides protection to bona fide purchasers.

Sections 2 and 3. These sections of the bill insert cross references to the Revised Simultaneous Death Act in G.S. 29-13, relating to the descent and distribution of the estate of a person dying intestate, and G.S. 31-42, the anti-lapse statute.

Section 4. This section of the bill updates the references to the Uniform Simultaneous Death Act in G.S. 31A-14 to provide that the Revised Simultaneous Death Act does not apply to cases governed by Chapter 31A of the General Statutes ("Acts Barring Property Rights").

Section 5. This section of the bill provides that the act becomes effective October 1, 2007, and applies to determinations of title to or devolution of property dependent upon the death of an individual occurring on or after that date.

Principal Clerk _____
Reading Clerk _____

2nd CORRECTED NOTICE – House Bill 1168 has been withdrawn

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 14, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 995	Increase Penalty/Starvation of Animals.	Representative McElraft
HB 1479	Juvenile Contempt/Procedures and Sanctions.	Representative Lucas Representative Glazier
HB 1617	Investigations of Deadly Force.	Representative Faison Representative Barnhart Representative Kiser Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

CORRECTED NOTICE – House Bill 1168 has been withdrawn

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HB 1168	Pitt County Protest Petitions.	Representative Warren
HB 1479	Juvenile Contempt/Procedures and Sanctions.	Representative Lucas Representative Glazier
HB 1617	Investigations of Deadly Force.	Representative Faison Representative Barnhart Representative Kiser Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 14, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 995	Increase Penalty/Starvation of Animals.	Representative McElraft
HB 1479	Juvenile Contempt/Procedures and Sanctions.	Representative Lucas Representative Glazier
HB 1617	Investigations of Deadly Force.	Representative Faison Representative Barnhart Representative Kiser Representative Glazier

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

June 14, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 14, 2007, with eleven members present. Senator Hartsell introduced pages Kelsey Knight, Danielle Elliott, Worth Hathaway, Barrett Knowles, Will Black, Stedman Gage and Will Atwater and thanked them for their service.

HB 1617 (Investigations of Deadly force.) Representative Glazier was recognized to explain the bill. Questions from Senators Jones, Goodall, Kerr, Bingham, Dorsett and Apodaca were answered by Representatives Glazier and Barnhart. Mr. Mark H. Newbold, Deputy City Attorney/Police Attorney for Charlotte-Mecklenburg Police Department spoke in opposition to the bill. Senator East moved for a favorable report, all voted and the motion carried.

HB 1479 (Juvenile Contempt/Procedures and Sanctions.) Representative Glazier was recognized to explain the bill. The question from Senator Bingham was answered by Representative Glazier. Senator Bingham then moved for a favorable report. All voted and the motion carried.

HB 995 (Increase Penalty/Starvation of Animals.) Representative McElraft was recognized to explain the bill. After much discussion, Senator Hartsell noted that the bill would be heard again at the Tuesday meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 14, 2007

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

FAVORABLE

H.B.(CS #1) **1479** Juvenile Contempt/Procedures and Sanctions.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-14-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anonymous	none
Judy McConnell	JOG
Lynne Safrit	NC Research Campus Kannapolis, NC
Wayne Key	staff
Lundergrim	staff
Jeffrey Walston	YA10 - DOA
Natasha Cox	YA10 - DOA
Mark Nicholls	CMPS
Henry Jones	Attorney Raleigh
Jon Carr	Jordan Price

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-14-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pete Jarvis	Gov Office
CASANDRA WHITE	GOV. OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 995

Short Title:	Increase Penalty/Starvation of Animals.	(Public)
Sponsors:	Representatives McElraft; Allred, Avila, Boylan, Current, Dollar, Fisher, Folwell, Frye, Glazier, T. Harrell, Harrison, Hilton, Howard, Hurley, Insko, Lewis, McComas, McGee, Moore, Neumann, Samuelson, Stam, Tillis, Underhill, Walker, and Wiley.	
Referred to:	Judiciary III.	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE INTENTIONAL STARVATION OF AN ANIMAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-360 reads as rewritten:

"**§ 14-360. Cruelty to animals; construction of section.**

(a) If any person shall intentionally overdrive, overload, wound, injure, torment, or kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor.

(b) If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or kill by intentional deprivation of necessary sustenance, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, or killed by intentional deprivation of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a Class I felony. However, nothing in this section shall be construed to increase the penalty for cockfighting provided for in G.S. 14-362.

(c) As used in this section, the words "torture", "torment", and "cruelly" include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word "intentionally" refers to an act committed knowingly and without justifiable excuse, while the word "maliciously" means an act committed intentionally and with malice or bad motive. As used in this section, the term "animal" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. However, this section shall not apply to the following activities:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

(3) Activities conducted for lawful veterinary purposes.

(4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

HOUSE BILL 995:
Increase Penalty/Starvation of Animals

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 13, 2007
Introduced by:	Rep. McElraft	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 995 would increase the penalty for killing an animal by intentionally depriving it of sustenance.

CURRENT LAW: G.S. 14-360(a) makes it a Class 1 misdemeanor to intentionally kill an animal or deprive an animal of necessary sustenance. G.S. 14-360(b) makes it a Class I felony to maliciously kill an animal, but there is no specific language in the felony offense that addresses depriving an animal of necessary sustenance. This section has been interpreted to mean that depriving an animal of necessary sustenance (even if it is malicious and leads to the animal's death) is only covered under subsection (a) as a misdemeanor.

The presumptive minimum sentence for a Class 1 misdemeanor is community punishment of 1 – 45 days and a fine at the discretion of the court. The presumptive minimum sentence for a Class I felony is community punishment of 4 – 6 months and a fine in the discretion of the court.

BILL ANALYSIS: House Bill 995 would add "...kill by intentional deprivation of necessary sustenance..." to the offenses against animals that are currently prohibited by subsection (b) of G.S. 14-360 and are punishable as Class I felonies.

EFFECTIVE DATE: The bill would become effective December 1, 2007, and would apply to offenses committed on or after that date.

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

H0995e1-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 995 (First Edition)

SHORT TITLE: Increase Penalty/Starvation of Animals.

SPONSOR(S): Representative McElraft

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction / Judicial	No significant impact anticipated for Courts or Corrections; amount cannot be determined. See Assumptions and Methodology pp. 2-4				
TOTAL EXPENDITURES:	Amount cannot be determined.				
ADDITIONAL PRISON BEDS: (cumulative)*	Number cannot be determined.				
POSITIONS: (cumulative)	Amount cannot be determined.				

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

EFFECTIVE DATE: December 1, 2007

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Current G.S. 14-360(a) provides that it is a Class 1 misdemeanor offense to intentionally "...injure, torment, or kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal..." Similarly, current G.S. 14-360(b) provides that it is a Class I felony offense to "...maliciously torture, mutilate, maim, cruelly beat, disfigure, or kill...any animal...," or to cause/procure such act.

H.B. 995 amends G.S. 14-360(b) to also provide that it is a Class I felony to kill, or cause/procure to be killed, any animal *by intentional deprivation of necessary sustenance.* It is assumed that inclusion in this subsection requires that the offense be done "*maliciously.*"

ASSUMPTIONS AND METHODOLOGY:

General

To the extent the proscribed acts are now prosecuted as "maliciously" killing or causing/procuring the killing of any animal (Class I felony), the proposed change would have little impact. However, if such acts are now prosecuted at the Class 1 misdemeanor level as intentional starvation, the proposed change could enhance the penalty for offenses meeting the "malicious" criterion - to the Class I felony level.

Offense data for G.S. 14-360 does not distinguish how many violations have resulted in the killing of an animal due to intentional starvation, or at what level such violations were prosecuted. Therefore, Fiscal Research cannot estimate the number of future violations that might fulfill the elements of the proposed Class I felony offense. However, *the relatively low number of felony charges and convictions under G.S. 14-360(b), coupled with the applicable penalty levels, does not suggest this proposal will have a significant fiscal impact.*

Department of Correction – Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.*[1] Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

There were 9 Class I felony convictions under G.S. 14-360(b) during FY 2005-06, relative to 196 Class 1 misdemeanor convictions under G.S. 14-360(a). Based on this low number of felony convictions, *the proposed change is not assumed to result in a significant number of additional felony convictions.*

However, it is not known how prosecution, conviction rates, or sentencing practices will differ in response to this proposal. If certain offenses, which would otherwise be prosecuted at the Class 1 misdemeanor level, were elevated to the Class I felony level, the enhancement would: 1) potentially increase the rate of active sentencing (incarceration); 2) significantly lengthen the period of incarceration; and 3) necessitate imprisonment within a state facility, thereby increasing

[1] The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

the demand for prison beds.[2] In FY 2005-06, 20% of Class 1 misdemeanor convictions received active sentences, with an average estimated time served of 31 days. In contrast, 15% of Class I felony convictions received active sentences, with an average estimated time served of approximately 7 months.[3]

For illustration, if twelve Class I convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; four additional beds in the second year; and 2 new employees in the second year.* Assuming these thresholds and inmate assignment to medium custody, the construction of four additional prison beds within a new, stand alone facility could cost the State $272,160 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately $168,480.[4] These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total $116,390 by FY 2009-10.[5]

Department of Correction – Division of Community Corrections

In FY 2005-06, 85% of Class I felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation.[6] Thus, *assuming that future felony convictions occur, the Division of Community Corrections could assume some additional costs for offenders placed under its jurisdiction.* It is not known how many offenders might be sentenced to intermediate or community punishments, to which type, or for how long. However, Fiscal Research anticipates that the majority of potential DCC costs will be incurred due to increased intermediate sanctioning.

- Presently, general supervision of intermediate and community offenders by a probation officer costs DCC $1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution.
- The daily cost per offender on intermediate sanction is much higher, ranging from $7.71 to $14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated $14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

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[2] Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties $18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

[3] These FY 2005-06 statistics per offense class are total conviction averages across all prior record levels and sentencing ranges (mitigated, presumptive, and aggravated). The type of sentence imposed (active, intermediate, or community) and length of sentence imposed could vary for affected offenses.

[4] New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

"Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

[5] Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

[6] 80% of Class 1 misdemeanor convictions resulted in non-active sentences in FY 2005-06.

Judicial Branch

AOC data for CY 2006 show 136 defendants charged with a felony under G.S. 14-360(b), relative to 446 charged with a misdemeanor under G.S. 14-360(a). Again, it is not known how prosecution may differ in response to the proposed change (e.g. how many Class I felony charges might occur for the proscribed offense, in lieu of Class 1 misdemeanor charges). However, the Administrative Office of the Courts expects that any potential penalty enhancement would be accompanied by more vigorous defense and prosecution, and would thereby increase court-time requirements and the associated costs of case disposal. Specifically, the AOC estimates that affected cases would be elevated to superior court, increasing jury involvement and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel. Table I demonstrates the estimated differences in costs per single trial and plea for an affected case.

Table 1 - Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08

Offense Class	*Trial*	*Plea*	*Change in Cost: Trial*	*Change in Cost: Plea*
Class 1 Misdemeanor	$ 3,702	$ 243	N/A	N/A
Class I Felony	$ 6,980	$ 298	*$ 3,278*	*$55*

As shown, prosecution at the Class I felony level could cost an additional $3,278 per trial, and $55 per plea. These cost estimates account for indigent defense. Actual costs may vary with time requirements and disposition.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Denise Thomas

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: May 10, 2007

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1479

Committee Substitute Favorable 5/22/07
Third Edition Engrossed 5/23/07

Short Title: Juvenile Contempt/Procedures and Sanctions. (Public)

Sponsors:

Referred to:

April 16, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROCEDURES AND SANCTIONS TO ADDRESS CONTEMPT BY JUVENILES.

The General Assembly of North Carolina enacts:

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

"Article 3.

"Contempt by Juveniles.

"**§ 5A-31. Contempt by a juvenile.**

(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet 16 years of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

(4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.

(5) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.

(6) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A of the General Statutes, Granting of Immunity to Witnesses.

(7) Willful communication with a juror in an improper attempt to influence the juror's deliberations.

(8) Any other act or omission specified in another Chapter of the General Statutes as grounds for criminal contempt.

(b) Contempt by a juvenile is direct contempt by a juvenile when each of the following conditions is met:

(1) The act is committed within the sight or hearing of a presiding judicial official.

(2) The act is committed in, or in the immediate proximity to, the room where proceedings are being held before the court.

(3) The act is likely to interrupt or interfere with matters then before the court.

(c) Contempt by a juvenile that is not direct contempt by a juvenile is indirect contempt by a juvenile.

"**§ 5A-32. Direct contempt by a juvenile.**

(a) A presiding judicial official may summarily impose measures in response to direct contempt by a juvenile when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt. Before imposing measures summarily, the judicial official shall do all of the following:

(1) Give the juvenile summary notice of the contempt allegation and a summary opportunity to respond.

(2) Appoint an attorney to represent the juvenile and allow time for the juvenile and attorney to confer.

(3) Find facts supporting the summary imposition of measures in response to contempt by a juvenile. The facts shall be established beyond a reasonable doubt.

(b) When a judicial official chooses not to proceed summarily, the official may enter an order appointing counsel for the juvenile and directing the juvenile to appear before a judge in a juvenile proceeding at a reasonable time specified in the order and show cause why the juvenile should not be held in contempt. A copy of the order shall be furnished to the juvenile and to the juvenile's attorney. If the direct contempt by a juvenile is based on acts before a judge that so involve the judge that the judge's objectivity may reasonably be questioned, the order shall be returned before a different judge presiding in juvenile court.

(c) After a determination is made pursuant to subsection (a) or (b) of this section that a juvenile has committed direct contempt, the court may order any or all of the following:

(1) That the juvenile be detained in a juvenile detention facility for up to five days.

(2) That the juvenile perform up to 30 hours of supervised community service as arranged by a juvenile court counselor.

(3) That the juvenile be required to undergo any evaluation necessary for the court to determine the needs of the juvenile.

The court shall not impose any of these sanctions without finding first that the juvenile's act or omission was willfully contemptuous or that the act or omission was preceded by a clear warning by the court that the conduct is improper.

(d) A judicial official who finds a juvenile in direct contempt may at any time terminate or reduce a sanction of detention or eliminate or reduce the number of hours of community service ordered if warranted by the juvenile's conduct and the ends of justice.

(e) A judicial official may orally order that a juvenile the official is charging with direct contempt be taken into custody and restrained to the extent necessary to assure the juvenile's presence for summary proceedings or notice of plenary proceedings.

(f) The clerk shall place a copy of any order or other paper issued pursuant to this section in the juvenile's juvenile file, if one exists, or in a new juvenile file.

(g) Appeal from an order finding a juvenile in direct contempt is to the Court of Appeals.

"**§ 5A-33. Indirect contempt by a juvenile.**

Indirect contempt by a juvenile may be adjudged and sanctioned only pursuant to the procedures in Subchapter II of Chapter 7B of the General Statutes.

"**§ 5A-34. When minor can be in contempt.**

(a) No act or omission by a minor younger than six years of age constitutes contempt.

(b) The provisions of Article 1 and Article 2 of this Chapter apply to acts or omissions by a minor who:

(1) Is 16 years of age or older;

(2) Is married or otherwise emancipated; or

(3) Before the act or omission, was convicted in superior court of any criminal offense."

SECTION 2. G.S. 7B-1501(7) reads as rewritten:

"(7) Delinquent juvenile. – Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle ~~laws.~~ laws, or who commits indirect contempt by a juvenile as defined in G.S. 5A-31."

SECTION 3. G.S. 7B-1603 reads as rewritten:

"**§ 7B-1603. Jurisdiction in certain circumstances.**

The court has exclusive original jurisdiction of all of the following proceedings:

(1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this ~~Chapter;~~ Chapter.

(2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when the juvenile's parent, guardian, custodian, or person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be ~~rendered; and~~ rendered.

(3) Proceedings to determine whether a juvenile should be emancipated.

(4) Proceedings in which a juvenile has been ordered pursuant to G.S. 5A-32(b) to appear and show cause why the juvenile should not be held in contempt."

SECTION 4. Article 17 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-1707. Direct contempt by juvenile.**

The preceding sections of this Article do not apply when a juvenile is ordered pursuant to G.S. 5A-32(b) to appear and show cause why the juvenile should not be held in contempt."

SECTION 5. G.S. 7B-2507(b) reads as rewritten:

"(b) Points. – Points are assigned as follows:

(1) For each prior adjudication of a Class A through E felony offense, 4 points.

(2) For each prior adjudication of a Class F through I felony offense or Class A1 misdemeanor offense, 2 points.

(3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, 1 point.

(4) If the juvenile was on probation at the time of offense, 2 points.

No points shall be assigned for a prior adjudication that a juvenile is in direct contempt of court or indirect contempt of court."

SECTION 6. G.S. 7B-2508(a) reads as rewritten:

"(a) Offense Classification. – The offense classifications are as follows:

(1) Violent – Adjudication of a Class A through E felony offense;

(2) Serious – Adjudication of a Class F through I felony offense or a Class A1 misdemeanor;

(3) Minor – Adjudication of a Class 1, 2, or 3 ~~misdemeanor.~~ misdemeanor or adjudication of indirect contempt by a juvenile."

SECTION 7. G.S. 143B-536 is amended by adding a new subdivision to read:

"(14a) Assist in the implementation of any order entered pursuant to G.S. 5A-32 as directed by a judicial official exercising jurisdiction under that section."

SECTION 8. This act becomes effective December 1, 2007, and applies to acts occurring or offenses committed on or after that date.

HOUSE BILL 1479:
Juvenile Contempt/Procedures and Sanctions

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 13, 2007
Introduced by:	Reps. Glazier, Lucas	**Summary by:**	Ben Popkin
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 1479 would create Article 3 in Chapter 5A of the General Statutes to address contempt by juveniles.

CURRENT LAW: Articles 1 and 2 of Chapter 5A address criminal and civil contempt generally. G.S. 7B-2505 (the Juvenile Code) provides that upon the motion of a juvenile court counselor or on the court's own motion, the court can issue an order directing a juvenile who has been adjudicated as undisciplined to appear to show cause why the juvenile should not be held in contempt of court for willfully failing to comply with an order of the court. The first time the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for not more than 24 hours. The second time a juvenile is held in contempt the court can order the juvenile to be held in an approved detention facility for not more than three days. For the third and all subsequent times a juvenile is held in contempt, the court may order to the juvenile to be confined in an approved detention facility for not more than five days. A juvenile cannot be confined for more than 14 days in one 12 month period.

BILL ANALYSIS: House Bill 1479 would enact statutes to address contempt by juveniles.

SECTION 1

Contempt by a Juvenile

If an unemancipated minor who: (i) is at least 6 years of age and not yet 16 years of age; (ii) has not been convicted of a crime in superior court; and (iii) commits any of the following acts, the individual is committing contempt:

- Willful behavior committed during court and directly tending to interrupt the proceedings.
- Willful behavior committed during court in the court's immediate view and presence and directly tending to impair the respect due to the court.
- Willful disobedience, resistance or interference with a court's lawful process, order, directive, instruction, or execution.
- Willful refusal to be sworn or affirmed as a witness or refusal to answer questions when the refusal is not legally justified.
- Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the court's business.
- Willful refusal to testify or produce other information upon the order of a judge under the statutes that grant immunity to witnesses.
- Willful communication with a juror in an improper attempt to influence to influence deliberations.
- Any other act or omission in another section of the statutes as a ground for criminal contempt.

The bill specifies 2 types of Contempt:

- Direct Contempt by a juvenile is when each of the following conditions is met:
    - The act is committed within the sight or hearing of a presiding judicial official.

- The act is committed in or the immediate proximity to the room where the proceedings are being held before the court.
- The act is likely to interfere or interrupt with matters before the court.

- Indirect Contempt is any contempt that is not direct contempt.

Direct Contempt

Sanctions for Direct Contempt: Summarily Imposed Sanctions

A presiding judicial official can summarily impose measures in response to direct contempt by a juvenile when needed to restore order or maintain the authority of the court and when the measures are imposed at about the same time as the contempt. Before imposing sanctions summarily, the judicial official must:

- Give the juvenile notice of the contempt allegation and an opportunity to respond.
- Appoint an attorney to represent the juvenile and allow time for them to confer.
- Find facts supporting the summary imposition of the measures and establish the facts beyond a reasonable doubt.

Sanctions for Direct Contempt: Sanctions that are not Summarily Imposed

If a judicial official chooses not to proceed summarily, the official can enter an order appointing counsel for the juvenile and direct the juvenile to appear before a judge and show cause why the juvenile should not be held in contempt. If the direct contempt is based on acts before a judge that so involve the judge that objectivity can be questioned, the contempt order shall be before a different judge.

Determination of Direct Contempt and Appeal

If the juvenile has committed direct contempt, the court can order any or all of the following:

- Detention in a juvenile detention facility for up to 5 days
- 30 hours of supervised community service arranged by a juvenile court counselor
- Evaluations necessary for the court to determine the needs of the juvenile

A judicial official can terminate or reduce the sanction at any time. Appeal from an order finding a juvenile in direct contempt is to the NC Court of Appeals.

Indirect Contempt:

Sanctions for Indirect Contempt:

Indirect contempt would be adjudged and sanctioned under G.S. 7B-2505 of the Juvenile Code.

SECTION 2 would amend the definition of delinquent juvenile to include committing indirect contempt.

SECTION 3 provides that the court has exclusive jurisdiction of juvenile contempt proceedings.

SECTION 4 of the bill provides that the intake and evaluation procedures for delinquent and undisciplined juveniles do not apply when a juvenile must appear and show cause in a contempt hearing.

SECTION 5 clarifies that points are not to be assigned for adjudications of direct and indirect contempt of court.

SECTION 6 states that an adjudication of indirect contempt falls within the minor offense classification.

SECTION 7 would add to the duties and powers of juvenile court counselors the duty to assist in the implementation of any order resulting from the direct contempt by a juvenile.

EFFECTIVE DATE: The bill would become effective December 1, 2007 and applies to acts occurring on or after that date.

Drupti Chauhan, counsel to House Judiciary II, substantially contributed to this summary. *H1479e3-SMRD*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

HOUSE BILL 1617

Short Title:	Investigations of Deadly Force.	(Public)
Sponsors:	Representatives Barnhart, Kiser, Glazier, and Faison (Primary Sponsors).	
Referred to:	Judiciary II.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INVESTIGATIONS OF THE USE OF DEADLY FORCE BY LAW ENFORCEMENT OFFICERS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-90. Investigations of uses of deadly force.**

In every instance in which a private citizen is killed as a result of the use of a firearm by a law enforcement officer in the line of duty, the district attorney in the prosecutorial district in which the death occurred shall, upon the request of the surviving spouse or next of kin of the private citizen within 180 days of the death, request the State Bureau of Investigation to conduct an investigation into the incident. For purposes of this section, the term "next of kin" includes only the child, father, mother, sister, or brother of the private citizen.

Statements prepared by or on behalf of a district attorney pursuant to this section are not public records as defined by G.S. 132-1 and may be released by the district attorney only as provided by G.S. 132-1.4 or other applicable law."

SECTION 2. This act becomes effective October 1, 2007, and applies to acts occurring on or after that date.

HOUSE BILL 1617:
Investigations of Deadly Force

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 14, 2007
Introduced by:	Reps. Barnhart, Kiser, Glazier, Faison	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 1617 would require district attorneys to investigate the use of deadly force by law enforcement officers in certain situations.

CURRENT LAW: G.S. 7A-61 sets forth the duties of district attorneys to include: preparing the trial docket; prosecution of all criminal actions and infractions requiring prosecution in State superior and district court; advising justice officers; and performing such duties related to appeals to the appellate courts as the State Attorney General may require. G.S. 147-89 states that it is the duty of district attorneys, who have United States district and circuit courts in their jurisdiction and with the permission of those courts, to prosecute or assist in prosecution State criminal cases that have been removed to federal court. On the request of the Governor or Attorney General, the State Bureau of Investigation has the power to investigate various criminal matters as provided in G.S. 114-15, including offenses against public safety, and riots and civil disorders. The State Bureau of Investigation can investigate without request incidents of arson, damage, and misuse of State property and assaults or threats against certain legislative, executive or judicial officers.

BILL ANALYSIS: House Bill 1617 would create a new section in the General Statutes that provides that the district attorney of the prosecutorial district where a private citizen is killed as a result of the use of a firearm by a law enforcement officer in the line of duty must, upon request of a surviving spouse or next of kin of the deceased within 180 days of the death, request the State Bureau of Investigation to investigate the incident. For the purposes of the section, "next of kin" is defined as the child, father, mother, sister or brother of the private citizen.

Statements prepared by a district attorney under the new section would not be public records as defined by G.S. 132-1 and can be released only as allowed by G.S. 132-1.4, which specifically provides what information in criminal investigations conducted by and records of criminal intelligence information compiled by public law enforcement agencies is public information.

EFFECTIVE DATE: The bill becomes effective October 1, 2007 and applies to acts occurring on or after that date.

Drupti Chauhan, counsel to House Judiciary II, substantially contributed to this summary.

H1617e1-SMRI

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 19, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 730	Mediation of Property Insurance Claims.-AB	Representative Goforth Representative Holliman
HB 865	Remove Barriers To Interstate Adoption.	Representative Goodwin Representative Glazier Representative Moore
HB 866	Expand Reach Of Courts/Term. Parental Rights.	Representative Goodwin Representative Moore
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 1634	Custody/Visitation/Military Orders.	Representative Martin Representative Hall Representative Goodwin Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 19, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 730	Mediation of Property Insurance Claims.-AB	Representative Goforth Representative Holliman
HB 865	Remove Barriers To Interstate Adoption.	Representative Goodwin Representative Glazier Representative Moore
HB 866	Expand Reach Of Courts/Term. Parental Rights.	Representative Goodwin Representative Moore
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 1634	Custody/Visitation/Military Orders.	Representative Martin Representative Hall Representative Goodwin Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

June 19, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 19, 2007, with ten members present. Senator Hartsell introduced pages Presley Garrison, Georgia Tanner, Warner Underwood, Malissa Wiggins, Caitlin Oakley and Kenley Lesak and thanked them for their service.

HB 1634 (Custody/Visitation/Military Orders.) Senator Hartsell noted that the bill had been heard previously by the Committee but due to changes we would hear it again. He asked for a motion to recall the bill. Senator Bingham so moved, all voted and the motion carried. Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Bingham so moved, all voted and the motion carried. Representative Martin was recognized to explain the bill. Ms. Jennifer McGinnis, Staff Attorney, gave additional explanation. Senator Apodaca moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

HB 865 (Remove Barriers To Interstate Adoption.) Representative Goodwin was recognized to explain the bill. Mr. Brinton Wright, representing the Bar Association, gave additional information on the bill in answer to Senator Bingham's question. Senator Jacumin moved for a favorable report. All voted and the motion carried.

HB 866 (Expand Reach of Courts/Term. Parental Rights.) Representative Goodwin was recognized to explain the bill. She then answered Senator Bingham's question. Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 1549 (Clarify Laws Governing Execution on Judgments) Representative McGee was recognized to explain the bill and Representative Stam gave additional explanation. Senator Bingham moved for a favorable report. All voted and the motion carried

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 19, 2007

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

FAVORABLE

H.B. **865** Remove Barriers To Interstate Adoption.
Sequential Referral: None
Recommended Referral: None

H.B. **866** Expand Reach Of Courts/Term. Parental Rights.
Sequential Referral: None
Recommended Referral: None

H.B. **1549** Clarify Laws Governing Execution on Judgments.
Sequential Referral: None
Recommended Referral: None

H.B. **1617** Investigations of Deadly Force.
Sequential Referral: None
Recommended Referral: None

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

H.B. **1634** Custody/Visitation/Military Orders.
Draft Number: PCS 50706
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 19, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PAUL WADDUS	NC DSS
Esther High	NC DSS
MARK SULLIVAN	Law Offices of Mark E. Sullivan, P.A. — RALEIGH
Trishana McKendall	YHO
Natasha Cox	YHO
Brinton Wright	NC Bar Assn.
Jami Fitzgerald	NC Family [illegible]
Catherine Blair	[illegible]
[illegible]	Staff
David Stoller	[illegible]
Rose Williams	DOI

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 19, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cliff Venable	Govs office
Katie Crumpling	Young Moore & Henderson
Robert Pasichal	Young, Moore
Saurabh Desai	Poyner Spruill
Danielle Barbara	Poyner & Spruill
Chad Essick	Poyner Spruill
John McMillan	NCTCS
Doug Heron	NCSU - FSSN
Alastair Macaulay	NCHCA
LISA MARTIN	NCASA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 865
Second Edition Engrossed 4/16/07

Short Title:	Remove Barriers To Interstate Adoption.	(Public)
Sponsors:	Representatives Goodwin, Glazier, Moore (Primary Sponsors); Alexander, Harrison, Lewis, Luebke, and Samuelson.	
Referred to:	Children, Youth and Families, if favorable, Judiciary I.	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REMOVE BARRIERS TO ADOPTION FOR RESIDENTS OF OTHER STATES SEEKING TO ADOPT CHILDREN IN NORTH CAROLINA UNDER THE LAWS PERTAINING TO TERMINATION OF PARENTAL RIGHTS AND ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1111(a) is amended by adding a new subdivision to read:

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

...

(10) Where the juvenile has been relinquished to a county department of social services or a licensed child-placing agency for the purpose of adoption or placed with a prospective adoptive parent for adoption; the consent or relinquishment to adoption by the parent has become irrevocable except upon a showing of fraud, duress, or other circumstance as set forth in G.S. 48-3-609 or G.S. 48-3-707; termination of parental rights is a condition precedent to adoption in the jurisdiction where the adoption preceding is to be filed; and the parent does not contest the termination of parental rights."

SECTION 2. G.S. 48-2-100 reads as rewritten:

"**§ 48-2-100. Jurisdiction.**

(a) Adoption shall be by a special proceeding before the clerk of superior court.

(b) Except as provided in subsection (c) of this section, jurisdiction over adoption proceedings commenced under this Chapter exists if, at the commencement of the proceeding:

(1) The adoptee has lived in this State for at least the six consecutive months immediately preceding the filing of the petition or from ~~birth, and the prospective adoptive parent is domiciled in this State; or~~birth;

(2) The prospective adoptive parent has lived in or been domiciled in this State for at least the six consecutive months immediately preceding the filing of the ~~petition.~~petition; or

(3) An agency licensed by this State or a county department of social services in this State has legal custody of the adoptee.

(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes. However, this subsection shall not apply if within 60 days after the date the petition for adoption is filed, the court of the other state dismisses its proceeding or releases its exclusive, continuing jurisdiction."

SECTION 3. This act becomes effective October 1, 2007, and applies to motions in the cause or petitions filed on or after that date.

HOUSE BILL 865:
Remove Barriers To Interstate Adoption

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 18, 2007
Introduced by:	Reps. Goodwin, Glazier, Moore	**Summary by:**	Ben Popkin
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 865 would amend statutes pertaining to termination of parental rights and adoption in order to make it easier for residents of other states to adopt children in North Carolina.

House Bill 865 would become effective October 1, 2007 and would apply to motions in the cause or petitions filed on or after that date.

CURRENT LAW:

Adoption conditioned upon termination of parental rights. In North Carolina, the biological parent's rights are not required to be terminated before an adoption can take place. It is enough if the biological parent consents to an adoption or relinquishes the child to an agency for adoption. The decree of adoption has the effect of terminating the biological parent's rights. However, some other states do require that the biological parent's rights be terminated before an adoption can take place.

Jurisdiction over adoption proceedings. Under the current law, a prospective adoptive parent must live in North Carolina for at least six months prior to filing an adoption petition, with the exception that a prospective adoptive parent who has moved to North Carolina may file a petition to adopt a child who has lived in North Carolina for six months or from birth.

In addition, a North Carolina court may not exercise jurisdiction over an adoption proceeding if another state is exercising jurisdiction in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act at the time the petition is filed.

BILL ANALYSIS: House Bill 865 would amend North Carolina law to make it easier for nonresidents to adopt children in North Carolina in the following ways:

Adoption conditioned upon termination of parental rights. **Section 1** of the bill adds a new provision to North Carolina's statute dealing with termination of parental rights. It would authorize the court to terminate parental rights when **all** of the following conditions are met:

- The child has been relinquished for adoption or directly placed with a prospective adoptive parent;
- The relinquishment or consent to adoption has become irrevocable;
- Termination of parental rights is a condition precedent to adoption in the jurisdiction where the adoption will take place; and
- The parent does not contest the termination.

Jurisdiction over adoption proceedings. **Section 2** of the bill would delete the requirement that a prospective adoptive parent reside in North Carolina before filing a petition to adopt. A North Carolina court would have jurisdiction under any of the following circumstances:

- The child has lived in North Carolina for six months or from birth;
- The prospective adoptive parent has lived in North Carolina for at least six months; or

- A North Carolina child-placing agency or department of social services has legal custody of the child.

The bill would also allow a North Carolina court to exercise jurisdiction when another state was already exercising jurisdiction at the time the adoption petition is filed if, within 60 days after the date the petition is filed, the other court dismisses its proceeding or releases jurisdiction.

EFFECTIVE DATE: The bill would become effective October 1, 2007 and would apply to termination of parental rights and adoption proceedings commenced on or after that date.

Wendy Graf Ray and Brad Krehely, counsels to House Children, Youth and Families, and House Judiciary I, substantially contributed to this summary.

H0865e2-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 866

Committee Substitute Favorable 4/10/07
Third Edition Engrossed 4/16/07

Short Title: Expand Reach of Courts/Term. Parental Rights. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE REACH OF NORTH CAROLINA COURTS IN PROCEEDINGS TO TERMINATE THE PARENTAL RIGHTS OF NONRESIDENT PARENTS OF RESIDENT CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. Provided, that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the state of residence of the parent. Provided, that before exercising jurisdiction under this Article regarding the parental rights of a nonresident parent, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201 or G.S. 50A-203, without regard to G.S. 50A-204 and that process was served on the nonresident parent pursuant to G.S. 7B-1106. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under Chapter 48 of the General Statutes."

SECTION 2. This act becomes effective October 1, 2007, and applies to motions in the cause or petitions filed on or after that date.

HOUSE BILL 866:
Expand Reach of Courts/Term. Parental Rights

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 18, 2007
Introduced by:	Reps. Goodwin, Moore	**Summary by:**	Ben Popkin
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 866 would amend Article 11 (Termination of Parental Rights) of Chapter 7B (Juvenile Code) of the General Statutes to expand the jurisdiction of North Carolina district courts hearing petitions or motions to terminate parental rights to any juvenile in the custody of a county department of social services or licensed child-placing agency. The bill would allow courts that have jurisdiction to make a child-custody determination to have jurisdiction to terminate the parental rights of any parent irrespective of the parent's state of residence.

CURRENT LAW: G.S. 7B-1101 grants North Carolina district courts "...exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district..."[1] The law requires "...that before exercising jurisdiction under this Article, the court shall find that is has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201 (Initial child-custody jurisdiction), 50A-203 (Jurisdiction to modify determination), or 50A-204 (Temporary emergency jurisdiction)."[2]

G.S. 50A-204 grants North Carolina courts "...temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse."[3] Custody determinations made by courts establishing jurisdiction under this section are primarily intended to be temporary orders. From the Official Comment following this section of the General Statutes, "The purpose of the order is to protect the child until the State that has jurisdiction under Sections 201-203 enters an order."

BILL ANALYSIS: House Bill 866 would amend Article 11 (Termination of Parental Rights) of Chapter 7B (Juvenile Code) of the General Statutes to expand the jurisdiction of North Carolina district courts hearing petitions or motions to terminate parental rights to any juvenile in the custody of a county department of social services or licensed child-placing agency. The bill would allow courts having jurisdiction to make a child-custody determination to have jurisdiction to terminate the parental rights of any parent irrespective of the parent's state of residence.

HB866 would require that, before a court may exercise jurisdiction regarding the parental rights of a nonresident parent, the court must find: 1) that is has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201 (Initial child-custody jurisdiction) or 50A-203 (Jurisdiction to modify determination), "...*without regard to G.S. 50A-204* (Temporary emergency jurisdiction)", and 2) that process was served on the nonresident parent pursuant to G.S. 7B-1106.

EFFECTIVE DATE: The act would be effective October 1, 2007 and would apply to motions or actions for termination of parental rights filed on or after that date. *H0866e3-SMRD*

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[1] G.S. 7B-1101.
[2] G.S. 7B-1101.
[3] G.S. 50A-204(a).

HOUSE BILL 1549

Short Title:	Clarify Laws Governing Execution on Judgments.	(Public)
Sponsors:	Representatives McGee and Stam (Primary Sponsors).	
Referred to:	Judiciary II.	

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-313(1) reads as rewritten:

"**§ 1-313. Form of execution.**

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) Against ~~Property—~~property.

a. No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

b. Real or personal property required to satisfy the judgment is subject to execution regardless of whether the property is encumbered. However, any personal or real property sold under execution remains subject to all prior encumbrances, including liens, mortgages, deeds of trust, perfected security interests, and prior judgments which became effective prior to the lien of the judgment pursuant to which the execution sale is held, in the same manner and to the same extent as if no such sale had been held."

SECTION 2. This act becomes effective October 1, 2007.

HOUSE BILL 1549:
Clarify Laws Governing Execution on Judgments

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 19, 2007
Introduced by:	Reps. McGee, Stam	**Summary by:**	Kory Goldsmith
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1549 clarifies the Civil Procedure law regarding execution on property required to satisfy a judgment. The bill states that real or personal property is subject to execution regardless of whether the property is encumbered. However, property sold under execution remains subject to all prior encumbrances.

CURRENT LAW:

Under current law, in most cases, the execution of a judgment in a civil action is directed to the sheriff to levy upon, or seize property of the debtor to satisfy the judgment. The execution against property of a judgment debtor must be first satisfied out of the personal property of the debtor, and if there is insufficient personal property to satisfy the judgment, then it can be satisfied out of real property belonging to the debtor on the day the judgment was docketed or at any time thereafter. The execution does not become a lien on personal property until it is actually levied on, or seized.

Case law has held that when a levy is made on an automobile subject to execution, the officer must report the levy to the Division of Motor Vehicles and the lien created by the levy becomes subordinate to all other liens noted on the certificate of title.

In addition, G.S. 1-339.68(b) provides:

(b) Any real property sold under execution remains subject to all liens which became effective prior to the lien of the judgment pursuant to which the sale is held, in the same manner and to the same extent as if no such sale had been held.

BILL ANALYSIS:

House Bill 1549 adds language to the law that defines execution against property to clarify that real or personal property required to satisfy a judgment is subject to execution, regardless of whether the property is encumbered. Any property sold under execution, remains subject to all prior encumbrances, including, liens, mortgages, deeds of trust, perfected security interests, and prior judgments.

EFFECTIVE DATE:

This act becomes effective October 1, 2007.

Karen Cochrane-Brown, counsel to House Judiciary II, substantially contributed to this summary.

H1549e1-SMRC;

HOUSE BILL 1634
Second Edition Engrossed 5/15/07

Short Title:	Custody/Visitation/Military Orders.	(Public)
Sponsors:	Representatives Martin, Goodwin, Hall, Moore (Primary Sponsors); Brown, Fisher, Glazier, Harrison, Hurley, and Ross.	
Referred to:	Homeland Security, Military and Veterans Affairs, if favorable, Judiciary I.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CUSTODY, VISITATION, EXPEDITED HEARING, AND ELECTRONIC COMMUNICATIONS PROCEDURES WHEN A PARENT RECEIVES MILITARY TEMPORARY DUTY, DEPLOYMENT, OR MOBILIZATION ORDERS.

Whereas, currently there are six major military bases in North Carolina; and

Whereas, the military population of this State is the fourth largest in the nation, with active-duty service members numbering over 100,000; and

Whereas, temporary duty, the deployment of an active-duty service member, or the mobilization of a member of the National Guard or Reserves, sometimes with little advance notice, can have a disruptive effect on custody or visitation arrangements involving minor children of service members; and

Whereas, service members should be protected, as should their minor children, from the loss of custodial arrangements and disruption of family contact due to the service member's absence pursuant to military orders for temporary duty, deployment, or mobilization; and

Whereas, other members of a service member's family, such as parents or current spouses, can provide love, comfort, care, and continuity to the service member's child through delegated visitation when a service member is absent due to military orders; and

Whereas, the regular scheduling of hearings may be harmful to the interest of service members who, due to military orders, may need to have an expedited hearing or may need to use electronic means to give testimony when they cannot appear in person in court; and

Whereas, the use of expedited hearings and testimony by electronic means, at the request of the service member who is absent or about to depart, would aid and

promote fair, efficient, and prompt judicial processes for the resolution of family law matters; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.7(a) reads as rewritten:

"(a) ~~An~~ Except as otherwise provided in G.S. 50-13.7A, an order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested."

SECTION 2. Article 1 of Chapter 50 of the General Statutes is amended by adding a new section to read:

"**§ 50-13.7A. Custody and visitation upon military temporary duty, deployment, or mobilization.**

(a) Purpose. – It is the purpose of this section to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent receives temporary duty, deployment, or mobilization orders from the military.

(b) Definitions. – As used in this section:

(1) The term 'deployment' means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.

(2) The term 'mobilization' means the call-up of National Guard or Reserve service member to extended active duty status. For purposes of this definition, 'mobilization' does not include National Guard or Reserve annual training.

(3) The term 'temporary duty' means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(c) Custody. – When a parent who has custody, or has joint custody with primary physical custody, receives temporary duty, deployment, or mobilization orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise custody responsibilities:

(1) Any temporary custody order for the child during the parent's absence shall end no later than 10 days after the parent returns; and

(2) The temporary duty, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer custody from the service member.

(d) Visitation. – If the parent with visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance

from the parent's residence or otherwise have a material effect on the parent's ability to exercise visitation rights, the court may delegate the parent's visitation rights, or a portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating visitation rights is in the child's best interest.

(e) Expedited Hearings. – Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(f) Electronic Communications. – Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance notice and for good cause shown, allow the parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic means' includes communication by telephone, video teleconference, or the Internet."

SECTION 3. This act becomes effective October 1, 2007, and applies to custody or visitation actions instituted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1634
Second Edition Engrossed 5/15/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1634-CSRI-17 [v.2]

6/18/2007 4:56:23 PM

Short Title: Custody/Visitation/Military Orders. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CUSTODY, VISITATION, EXPEDITED HEARING, AND ELECTRONIC COMMUNICATIONS PROCEDURES WHEN A PARENT RECEIVES MILITARY TEMPORARY DUTY, DEPLOYMENT, OR MOBILIZATION ORDERS.

Whereas, currently there are six major military bases in North Carolina; and

Whereas, the military population of this State is the fourth largest in the nation, with active-duty service members numbering over 100,000; and

Whereas, temporary duty, the deployment of an active-duty service member, or the mobilization of a member of the National Guard or Reserves, sometimes with little advance notice, can have a disruptive effect on custody or visitation arrangements involving minor children of service members; and

Whereas, service members should be protected, as should their minor children, from the loss of custodial arrangements and disruption of family contact due to the service member's absence pursuant to military orders for temporary duty, deployment, or mobilization; and

Whereas, other members of a service member's family, such as parents or current spouses, can provide love, comfort, care, and continuity to the service member's child through delegated visitation when a service member is absent due to military orders; and

Whereas, the regular scheduling of hearings may be harmful to the interest of service members who, due to military orders, may need to have an expedited hearing or may need to use electronic means to give testimony when they cannot appear in person in court; and

Whereas, the use of expedited hearings and testimony by electronic means, at the request of the service member who is absent or about to depart, would aid and

promote fair, efficient, and prompt judicial processes for the resolution of family law matters; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.7(a) reads as rewritten:

"(a) ~~An~~ Except as otherwise provided in G.S. 50-13.7A, an order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested."

SECTION 2. Article 1 of Chapter 50 of the General Statutes is amended by adding a new section to read:

"**§ 50-13.7A. Custody and visitation upon military temporary duty, deployment, or mobilization.**

(a) Purpose. – It is the purpose of this section to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent receives temporary duty, deployment, or mobilization orders from the military.

(b) Definitions. – As used in this section:

(1) The term 'deployment' means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.

(2) The term 'mobilization' means the call-up of National Guard or Reserve service member to extended active duty status. For purposes of this definition, 'mobilization' does not include National Guard or Reserve annual training.

(3) The term 'temporary duty' means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(c) Custody. – When a parent who has custody, or has joint custody with primary physical custody, receives temporary duty, deployment, or mobilization orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise custody responsibilities:

(1) Any temporary custody order for the child during the parent's absence shall end no later than 10 days after the parent returns, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child; and

(2) The temporary duty, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a

determination of change of circumstances if a motion is filed to transfer custody from the service member.

(d) Visitation. – If the parent with visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise visitation rights, the court may delegate the parent's visitation rights, or a portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating visitation rights is in the child's best interest.

(e) Expedited Hearings. – Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(f) Electronic Communications. – Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance notice and for good cause shown, allow the parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic means' includes communication by telephone, video teleconference, or the Internet.

(g) Nothing in this section shall alter the duty of the court to consider the best interest of the child in deciding custody or visitation matters."

SECTION 3. This act becomes effective October 1, 2007, and applies to custody or visitation actions instituted on or after that date.

HOUSE BILL 1634:
Custody/Visitation/Military Orders

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 18, 2007
Introduced by:	Reps. Martin, Goodwin, Hall, Moore	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition H1634-CSRI-17		Committee Counsel

SUMMARY: ***House Bill 1634 would amend the law relating to custody and visitation when a custodial parent is mobilized or otherwise receives military orders that require the parent to move temporarily away from the residence. The bill would become effective on October 1, 2007, and apply to custody or visitation actions instituted on or after that date.***

CURRENT LAW: The statutes do not have specific guidelines for a court in addressing custody and visitation issues when a custodial parent receives temporary duty, deployment, or mobilization orders.

CHANGES MADE BY PCS: Denoted below by underline.

BILL ANALYSIS: The bill would create a new section in Chapter 50, to specifically address the situation when a custodial parent is put on temporary duty, mobilized, or deployed on military orders. The bill includes definitions and the following substantive provisions:

- **Custody**- The court must apply specific rules when there is a material effect on a parent's ability to exercise custodial responsibilities, including both of the following:
    - **Any temporary custody order for the child during the parent's temporary duty, mobilization, or deployment must end no later than 10 days after the parent returns,** but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child.
    - **Deployment not a factor in change of circumstances determination** - If a motion to transfer custody from a service member is filed, the temporary duty, mobilization, or deployment is excluded as a factor in making a change of circumstances determination. Under existing law, a showing of change circumstances is required in order for a court to modify or vacate a custody order.
    - **Delegation of visitation rights** - If a parent with visitation rights receives temporary duty, mobilization, or deployment orders, then a court may delegate the parent's visitation rights to a family member if it is in the child's best interest.
- **Expedited hearings** - Upon motion of a parent who has received temporary duty, mobilization, or deployment orders, and for good cause shown, a court must expedite a hearing for custody and visitation matters.
- **Testimony and evidence by electronic means** - Upon motion of a parent who has received temporary duty, mobilization, or deployment orders, for good cause shown, and upon reasonable notice a court must allow a parent in custody and visitation matters to present

testimony and evidence by electronic means if the parent's military duties have a material effect on their ability to appear at a hearing.

- The PCS provides that these provisions will not alter the duty of the court to consider the best interest of the child in deciding custody or visitation matters

EFFECTIVE DATE: The bill would become effective on October 1, 2007, and apply to custody or visitation actions instituted on or after that date.

BACKGROUND: State law requires that a court consider all facts in a case and decide custody issues in accordance with the best interests of the child. See G.S. 50-13.2 on reverse.

§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child.

Hal Pell, counsel to the House Homeland Security, Military and Veterans Affairs Committee, and Brad Krehely, counsel to the House Judiciary I Committee, substantially contributed to this summary.

H1634e2-SMRI-CSRI-17

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 21, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 854	Amend Private Protective Services Act.	Senator Snow
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
HB 550	Modify School Employee Confidentiality Law.	Representative Love, Sr.
HB 1487	Pro Bono Emeritus Lawyers.	Representative Blue Representative Stam

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 21, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 854	Amend Private Protective Services Act.	Senator Snow
SB 1202	Litter Violation Reported by Citizen.	Senator Jacumin
HB 550	Modify School Employee Confidentiality Law.	Representative Love, Sr.
HB 1487	Pro Bono Emeritus Lawyers.	Representative Blue Representative Stam

Presentations

Other Business

Adjournment

SENATE JUCICIARY II COMMITTEE

Minutes

June 21, 2007

Senator Austin Allran, Vice Chairman, called the Senate Judiciary II Committee to order on June 21, 2007, with thirteen members present. Senator Allran introduced Pages Stephanie Kopelic, Jasmine Scott, Laura Hoist, Zoe Whiteside, Alex Williams, Emily Dunn, Caitlin Oakley, Ashwin Peres-da-Silva and Jon William Lamme and thanked them for their service.

SB 854 (Amend Private Protective Services Act.) Senator Allran asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Bingham so moved, all voted and the motion carried. Senator Snow was recognized to explain the bill. Questions from Senators Jones and Bingham were answered by Senator Snow and Mr. Charles McDarris, Attorney for the North Carolina Private Protective Services Board. Mr. Larry Alexander, representing North Carolina Security Professionals, Mr. Grady Conner, Private Investigator and Mr. Larry Flannery representing the North Carolina Association of Private Investigators spoke in favor of the bill. Senator Snow offered a technical amendment and moved that it be accepted. All voted and the motion carried. Senator East moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill with a referral to Finance. All voted and the motion carried.

SB 1202 (Litter Violation Reported by Citizen.) Senator Allran asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Apodaca so moved, all voted and the motion carried. Senator Jacumin was recognized to explain the bill. Senator Berger offered an amendment and asked that it be adopted. After much discussion, Senator Berger withdrew the amendment. Senator Jacumin offered an amendment and asked that it be adopted. After discussion, Senator Jacumin withdrew his amendment. Senator Queen moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill with a referral to Rules. All voted and the motion carried.

HB 550 (Modify School Employee confidentiality Law.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator East so moved, all voted and the motion carried. Representative Love was recognized to explain the bill. Questions from Senators Allran and Jones were answered by Representative Love. Senator Snow moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1487 (Pro Bono Emeritus Lawyers.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Bingham so moved, all voted and the motion carried. Representative Blue was recognized to explain the bill. Mr. John McMillan, representing the Bar Association, gave additional explanation. Representative Blue answered the questions of Senators Jones and Kerr. Senator Snow moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 25, 2007

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

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

S.B. **854** Amend Private Protective Services Act.

Draft Number:	PCS 65262
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

S.B. **1202** Litter Violation Reported by Citizen.

Draft Number:	PCS 85342
Sequential Referral:	None
Recommended Referral:	Rules and Operations of the Senate
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **550** Modify School Employee Confidentiality Law.

Draft Number:	PCS 30502
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) **1487** Pro Bono Emeritus Lawyers.

Draft Number:	PCS 70567
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-21-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Summers	N.C. STATE BAR
John McMillan	MFOS
LARRY Alexander	N.C. Association Security Professionals, C.
GRADY W. CONNER	820 2nd AVE. SW, Hickory NC 28602
EDDIE Caldwell	NC Sheriffs' Assn.
LARRY FLANNERY	NC ASSOCIATION OF PRIVATE INVESTIGATORS
Paul Schorl	NC Assoc. of Private Investigators
Cecil O'Barb	NCAE
Judith Bass	Bass & Assoc.
Michael Thorsen	NCAE
Rita Joseph	SBE

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-21-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CASANDRA WHITE	GOV. OFFICE
Leanne Vunnie	UCSBA
Erin Schuellody	UNC
[illegible]	NCICM
Linder Guinn	Staff
Clarke Yeager	Staff
Tracy Kimbrell	Parker Poe
BRUCE THOMPSON	PARKER POE
Silas Sloan	
Grayson Sloan	
[illegible]	

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-21-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCAWC
Keith Knox	NC Magistrates Assoc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 854

Short Title:	Amend Private Protective Services Act.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II (Criminal).	

March 19, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3 reads as rewritten:

"**§ 74C-3. Private protective services profession defined.**

(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) "Armored car profession" means any person, firm, association, or corporation which provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables for a fee or other valuable consideration. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) ~~"Counterintelligence service profession"~~"Electronic countermeasures profession' means any person, firm, association, or corporation which discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation for a fee or other valuable consideration.

(4) "Courier service profession" means any person, firm, association, or corporation which transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious service

for a fee or other valuable consideration. Armed courier service ~~guards~~ officers shall be subject to the provisions of G.S. 74C-13.

(5) "Detection of deception examiner" means any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(6) "Security ~~guard~~ officer and patrol profession" means any person, firm, association, or corporation that provides a security ~~guard~~ officer on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performing one or more of the following functions:

a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

b. Prevention, observation, or detection of any unauthorized activity on private property;

c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services; or

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(7) "Guard-dog service profession" means any person, firm, association, or corporation which contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property for a fee or other valuable consideration.

(8) "Private detective" or "private investigator" are synonymous and mean any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning the below-listed topics on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States;

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

c. The location, disposition, or recovery of lost or stolen property;

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties;

e. Securing evidence to be used before any court, board, officer, or investigative committee; or

f. Protection of individuals from serious bodily harm or death.

(9) "Special limited ~~guard~~ officer and patrol profession" means any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security ~~guard~~ officer and patrol license. Any experience gained under this limited license shall not be counted as experience for a security ~~guard~~ officer and patrol license.

(b) "Private protective services" shall not mean:

(1) Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance company;

(2) An officer or employee of the United States, this State, or any political subdivision of either while ~~such~~ the officer or employee is engaged in the performance of his or her official duties within the course and scope of his or her employment with the United States, this State, or any political subdivision of either;

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,

b. Information for employment purposes,

c. Information for the underwriting of insurance involving the consumer,

d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility, or

e. A legitimate business need for the information in connection with a business transaction involving the consumer;

(4) An attorney at law licensed to practice in North Carolina while engaged in ~~such~~ the practice of law and ~~his~~ the attorney's agent, provided ~~said~~ the agent is performing duties only in connection with his or her principal's practice of law;

(5) The legal owner or lien holder, and his or her agents and employees, of personal property which has been sold in a transaction wherein a security interest in personal property has been created to secure the

sales transaction, who engage in repossession of ~~said~~ the personal property;

(6) Repealed by Session Laws 1989, c. 759, s. 3.

(7) Repealed by Session Laws 1981, c. 807, s. 1.

(8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job for that person, firm, association, or corporation and, while performing ~~such~~ the job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a licensee;

(9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General Statutes;

(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment;

(11) A person who conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:

a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) Research laboratories and consultants who analyze, test, or in any way apply their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and give their opinions and findings to the requesting source or to a designee of the requestor;

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security ~~guard~~ officer and wears, carries, or possesses a firearm in the performance of ~~his~~ the employee's duties, the provisions of G.S. 74C-13 apply;

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the business; or

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts."

SECTION 2. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court;

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such schools; ~~and~~

(10) Contract for services as necessary to carry out the functions of the ~~Board.~~Board;

(11) Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter; and

(12) Approve a design for a badge or shield that indicates a person is licensed to engage in private protective services."

SECTION 3. G.S. 74C-9 reads as rewritten:

"**§ 74C-9. Form of license; term; renewal; posting; branch offices; not assignable; late renewal fee.**

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee,

(2) The name under which the licensee is to operate, and

(3) The number and expiration date of the license.

(b) The license shall be issued for a term of ~~one year.~~two years. A trainee permit shall be issued for a term of ~~one year.~~two years. All licenses must be renewed prior to the expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the licensee's principal place of business, in North Carolina, unless for good cause exempted by the Director. A license issued under this Chapter is not assignable. The Board may require all licensees to complete continuing education courses approved by the Board before renewal of their licenses.

(c) Repealed by Session Laws 1989, c. 759, s. 7.

(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of one year. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ($50.00);

(5) A late renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the licensee;

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);
(7) An application fee for ~~an armed security guard~~a firearm registration permit not to exceed fifty dollars ($50.00);
(8) A new, renewal, replacement, or reissuance fee for ~~an armed security guard~~a firearm registration permit not to exceed thirty dollars ($30.00);
(9) An application fee for certification as a certified trainer not to exceed fifty dollars ($50.00);
(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ($25.00);
(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);
(12) An unarmed registration transfer fee not to exceed fifteen dollars ($15.00);
(13) A branch office license fee not to exceed fifty dollars ($50.00); and
(14) A special limited ~~guard~~ officer and patrol license fee not to exceed one hundred dollars ($100.00).

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter.

(f) A license or trainee permit granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by the licensee or permit holder to the Director of intended renewal, the payment of the proper fee, and evidence of a policy of liability insurance as prescribed in G.S. 74C-10(e).

The renewal shall be finalized before the expiration date of the license. In no event will renewal be granted more than three months after the date of expiration of a license or trainee permit.

(g) Upon notification of approval of ~~his~~ the application by the Board, an applicant must furnish evidence that ~~he~~ the applicant has obtained the necessary liability insurance required by G.S. 74C-10 and obtain the license applied for or ~~his~~ the application shall lapse.

(h) Trainee permits shall not be issued to applicants that qualify for a private detective license. A licensed private detective may supervise no more than five trainees at any given time."

SECTION 4. G.S. 74C-11 reads as rewritten:

"**§ 74C-11. Probationary employees and registration of regular employees; unarmed security ~~guard~~ officer required to have registration card.**

(a) All licensees may employ unarmed security ~~guards~~ officers as probationary employees for 20 calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security ~~guard~~ officer as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion,

extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.

(b) A security ~~guard~~ officer and patrol company may not employ an unarmed security ~~guard~~ officer in a regular position unless the ~~guard~~ officer has a registration card issued under subsection (d) of this section. A person engaged in a private protective services profession may not employ an armed security ~~guard~~ officer unless the ~~guard~~ officer has a firearm registration permit issued under G.S. 74C-13.

(c) The Director shall be notified in writing of the termination of any regular employee registered under subsection (a) of this section within 10 days after the termination.

(d) An unarmed security ~~guard~~ officer shall make application to the Director for an unarmed registration card which the Director shall issue to ~~said~~ the applicant after receipt of the information required to be submitted by ~~his~~ the applicant's employer pursuant to subsection (a), and after meeting any additional requirements which the Board, in its discretion, deems to be necessary. The unarmed security ~~guard~~ officer registration card shall be in the form of a pocket card designed by the Board, shall be issued in the name of the applicant, and may have the applicant's photograph affixed thereto. The unarmed security ~~guard~~ officer registration card shall expire one year after its date of issuance and shall be renewed every year. The Board may require all registration holders to complete continuing education courses approved by the Board before renewal of their registrations. If an unarmed registered security ~~guard~~ officer is terminated by a licensee and changes employment to another security ~~guard~~ officer and patrol company, the security ~~guard's~~ officer's registration card shall remain valid, provided the security ~~guard~~ officer pays the unarmed ~~guard~~ officer registration transfer fee to the Board and a new unarmed security ~~guard~~ officer registration card is issued. An unarmed security ~~guard~~ officer whose transfer registration application and transfer fee have been sent to the Board may work with a copy of the transfer application until the registration card is issued.

(e) Notwithstanding the provisions of this section, a licensee may employ a person properly registered or licensed as an unarmed security ~~guard~~ officer in another state for a period not to exceed 10 days in any given month; provided the licensee, prior to employing the unarmed security ~~guard,~~officer, submits to the Director the name, address, and social security number of the unarmed ~~guard~~ officer and the name of the

state of current registration or licensing, and the Director approves the employment of the unarmed ~~guard~~ officer in this State.

(f) Repealed by Session Laws 2005-211, s. 1, effective July 20, 2005."

SECTION 5. G.S. 74C-12 reads as rewritten:

"**§ 74C-12. Denial, suspension, or revocation of license, registration, or ~~permit.~~permit; duty to report criminal arrests.**

(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit;

(2) Violated any provision of this Chapter;

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this Chapter;

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state;

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter;

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) Knowingly made any false report to the employer or client for whom information is being obtained;

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping;

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding;

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding;

(14) Failed to make the required contribution to the Private Protective Services Recovery Fund or failed to maintain the certificate of liability insurance required by this Chapter;

(15) Violated the firearm provisions set forth in this Chapter;

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter;

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent;

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271;

(20) Failed or refused to offer a report to a client within 30 days of the client's written ~~request;~~request after the client has paid for services rendered;

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause;

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter;

(23) Divulged to any person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or ~~his~~ district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client;

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority;

(25) Intemperate habits or lacks good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision;

(26) Advertised or solicited business using a name other than that in which the license was issued;

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a ~~private detective or private investigator~~law enforcement officer while licensed under the provisions of this Chapter as a private ~~investigator.~~investigator;

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board.

(b) The denial, revocation, or suspension of a license, registration, or permit by the Board shall be in writing, be signed by the Director of the Board, and state the grounds upon which the Board decision is based. The aggrieved person shall have the

right to appeal from this decision as provided in Chapter 150B of the General Statutes. The aggrieved person shall file the appeal within 60 days of receipt of the Board's decision.

(c) The following persons may not be issued a license, registration, or permit under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes.

(d) A licensee shall report to the Board in writing within 30 days any charge, arrest for, or conviction of a misdemeanor or felony for any of the following:

(1) Crimes that have as an essential element dishonesty, deceit, fraud, or misrepresentation.

(2) Illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage.

(3) Illegal use, carrying, or possession of a firearm.

(4) Acts involving assault.

(5) Acts involving unlawful breaking or entering, burglary, or larceny.

(6) Any offense involving moral turpitude.

For purposes of this section, the term 'conviction' includes the entry of a plea of guilty, a plea of nolo contendere, or a finding of guilt by a court of competent jurisdiction. The licensee's failure to report a charge, arrest for, or conviction of a misdemeanor or felony is grounds for revocation of the license."

SECTION 6. G.S. 74C-13 reads as rewritten:

"**§ 74C-13. Armed ~~security guard~~licensee or registered employee required to have firearm registration permit; ~~security guard~~firearms training.**

(a) It shall be unlawful for any person performing ~~the duties of an armed security guard~~private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications as set forth in this section and having been issued a firearm registration permit by the Board. For the purposes of this section, the following terms are defined:

(1) 'Armed private investigator' means a licensed private investigator who, at any time, wears, carries, or possesses a firearm in the performance of duty.

~~(1)~~(1a) "Armed security ~~guard~~"officer' means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of an armed security watchman; armed armored car service ~~guard;~~officer; armed alarm system company responder; ~~private detective;~~ or armed courier service ~~guard~~ officer who at any time wears, carries, or possesses a firearm in the performance of duty.

(2) "Contract security company" means any person, firm, association, or corporation engaging in a private protective services profession that provides services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(3) "Proprietary security organization" means any person, firm, association, or corporation or department thereof which employs security ~~guards,~~officers, alarm responders, armored car personnel, or couriers who are employed regularly and exclusively as an employee by an employer in connection with the business affairs of ~~such~~ the employer.

(b) It shall be unlawful for any person, firm, association, or corporation and its agents and employees to employ an armed security ~~guard~~ officer or an armed private investigator and knowingly authorize or permit ~~him~~ the armed security officer or armed private investigator to carry a firearm during the course of performing his or her duties as an armed security ~~guard~~ officer or an armed private investigator if the Board has not issued him or her a firearm registration permit under this section or if the person, firm, association, or corporation permits an armed security ~~guard~~ officer or an armed private investigator to carry a firearm during the course of performing his or her duties whose firearm registration permit has been suspended, revoked, or has otherwise expired:

(1) ~~An armed security guard~~ A firearm registration permit grants authority to the armed security ~~guard,~~officer or armed private investigator, while in the performance of his or her duties or traveling directly to and from work, to carry ~~a standard .38 caliber or .32 caliber revolver or any other~~any firearm approved by the Board and not otherwise prohibited by law. The use of any firearm not approved by the Board is prohibited.

(2) All firearms carried by authorized armed security ~~guards~~ officers in the performance of their duties shall be owned or leased by the employer. Personally owned firearms shall not be carried by an armed security ~~guard~~ officer in the performance of his or her duties.

(c) The applicant for ~~an armed security guard~~a firearm registration permit shall submit an application to the Board on a form provided by the Board.

(d) Each ~~armed security guard~~ firearm registration permit issued under this section to an armed security officer shall be in the form of a pocket card designed by the Board and shall identify the contract security company or proprietary security organization by whom the holder of the firearm registration permit is employed. ~~An armed security guard~~A firearm registration permit issued to an armed security officer expires one year after the date of its issuance and must be renewed annually unless the permit holder's employment terminates before the expiration of the permit. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(d1) Each firearm registration permit issued under this section to an armed private investigator shall be in the form of a pocket card designed by the Board and shall identify the name of the armed private investigator. A private investigator firearm registration permit expires one year from the date of issuance and shall be renewed annually. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(e) If ~~the holder of~~ an armed security ~~guard firearm registration permit~~officer terminates his or her employment with the contract security company or proprietary security organization, the firearm registration permit expires and must be returned to the Board within 15 working days of the date of termination of the employee.

(f) A contract security company or proprietary security organization shall be allowed to employ an individual for 30 days as an armed security ~~guard~~officer pending completion of the firearms training required by this Chapter, if the contract security company or proprietary security organization obtains prior approval from the Director. The Board and the Attorney General shall provide by rule the procedure by which an armed private investigator, a contract security ~~company~~company, or a proprietary security organization applicant may be issued a temporary firearm registration permit by the Director of the Board pending a determination by the Board of whether to grant or deny an applicant a firearm registration permit.

(g) The Board may suspend, revoke, or deny ~~an armed security guard~~a firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this section or rules promulgated by the Board to implement this section. The Director may summarily suspend ~~an armed security guard~~a firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against the holder of the permit.

(h) The Board and the Attorney General shall establish a firearms training program for ~~armed security guards~~licensees and registered employees to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General may approve training programs conducted by a contract security company and the security department of a proprietary security organization, if the contract security company or security department of a proprietary security organization offers the courses listed in subdivision (1) of this subsection and if the instructors of the training program are certified trainers approved by the Board and the Attorney General:

(1) The basic training course approved by the Board and the Attorney General shall consist of a minimum of four hours of classroom training which shall include:

a. Legal limitations on the use of hand guns and on the powers and authority of an armed security ~~guard,~~officer;

b. Familiarity with this ~~section,~~section;

c. Range firing and procedure and hand gun safety and ~~maintenance,~~maintenance; and

d. Any other topics of armed security ~~guard~~officer training curriculum which the Board deems necessary.

(2) An applicant for ~~an armed security guard~~a firearm registration permit must fire a minimum qualifying score to be determined by the Board and the Attorney General on any approved target course approved by the Board and the Attorney General.

(3) ~~An armed security guard~~A firearms registrant must complete a refresher course and shall requalify on the prescribed target course prior to the renewal of his or her firearm registration permit.

(4) The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this section.

(i) The Board may not issue ~~an armed security guard~~a firearm registration permit to an applicant until the applicant's employer submits evidence satisfactory to the Board that the applicant:

(1) Has satisfactorily completed an approved training course.

(2) Meets all the qualifications established by this section and by the rules promulgated to implement this section.

(3) Is mentally and physically capable of handling a firearm within the guidelines set forth by the Board and the Attorney General.

(j) The Board and the Attorney General are authorized to prescribe reasonable rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued ~~an armed security guard~~a firearm registration permit by the Board.

(k) All fees collected pursuant to G.S. 74C-9(e)(7) and (8) shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering the firearms provisions of this Chapter.

(l) The Board and the Attorney General shall establish a training program for certified trainers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board or the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(1) The Board and the Attorney General shall also establish renewal requirements for certified trainers. The Board may require all certified trainers to complete continuing education courses approved by the Board before renewal of their certifications.

(2) No certified firearms trainer shall certify ~~an armed security guard~~a licensee or registrant unless the ~~armed security guard~~licensee or registrant has successfully completed the firearms training requirements set out above in subsection (h) of this section.

(m) The Board and the Attorney General shall establish a training program for unarmed security ~~guards~~ officers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(n) A private investigator shall be permitted to carry a concealed weapon during the performance of his or her duties as a private investigator upon: (i) obtaining a concealed weapon permit issued pursuant to G.S. 14-415.11; (ii) successfully completing the firearms training course approved by the Board and the Attorney General; and (iii) having a notation affixed to the face of the firearms registration card designating that the armed private investigator is allowed to carry a concealed weapon.

A private investigator who does not carry a weapon during the course of his or her duties as a private investigator but who wishes to carry a concealed weapon while not engaged in private investigative duties shall be permitted to do so upon completion of the requirements set forth in Article 54B of Chapter 14 of the General Statutes."

SECTION 7. G.S. 74C-14 reads as rewritten:

"**§ 74C-14. Mace.**

It shall be lawful for security ~~guards~~ officers registered pursuant to the provisions of this Chapter to possess and use tear gas (mace) to the extent allowed under the provisions of G.S. 14-401.6."

SECTION 8. G.S. 74C-21 reads as rewritten:

"**§ 74C-21. Law enforcement officer provisions.**

(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security ~~guard~~ officer and patrol licensee under this Chapter.

(b) An off-duty law enforcement officer may be employed during his or her off-duty hours by a licensed security ~~guard~~ officer and patrol company on an employer-employee basis. An off-duty law enforcement officer shall not wear his or her police officer's uniform or use the police equipment while working for a security ~~guard~~ officer and patrol company.

(c) A law enforcement officer may provide security ~~guard~~ officer and patrol services on an individual employer-employee basis to a person, firm, association, or corporation that is not engaged in a security ~~guard~~ officer and patrol profession."

SECTION 9. Article 1 of Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-22. Continuing education.**

The Board may require individuals holding a license, registration, certificate, or permit to complete continuing education courses approved by the Board before renewal. The Board shall establish, by rule, the number of hours of continuing education necessary for renewal and any other requirements for completion of continuing education courses. The Board shall have the authority to approve continuing education courses and shall consider the continuing education course criteria, including the course curriculum, the qualifications of the instructor, the potential benefit to the industry, and any other criteria the Board deems appropriate."

SECTION 10. G.S. 74C-30 reads as rewritten:

"**§ 74C-30. Private Protective Services Recovery Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services Recovery Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. Said Fund shall be used in the manner provided in this Article for the payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.

(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the

repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

~~(1) On July 1, 1983, the Board shall charge every licensee and trainee possessing a license or trainee permit on that date a fee of fifty dollars ($50.00);~~

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars ($100,000);~~twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to ~~one hundred thousand dollars ($100,000).~~twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from ~~such~~ the investments shall be deposited to the credit of the Fund. The Board in its discretion, may use any and all of the proceeds from ~~such~~ the investments or funds that exceed twenty-five thousand dollars ($25,000) for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the industry;

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees and trainees; and

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: 'The course is being given in whole or in part by a grant from the Private Protective Services Board.'

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 11. G.S. 74C-31(d) reads as rewritten:

"(d) Until ~~such time as~~ the Fund reaches ~~one hundred thousand dollars ($100,000),~~twenty-five thousand dollars ($25,000), or at any time the Fund has insufficient assets in excess of ~~one hundred thousand dollars ($100,000)~~twenty-five thousand dollars ($25,000) to pay outstanding claims, the State Treasurer shall not disburse any payments to an aggrieved party. However, any party aggrieved and awarded payment as ordered by the Board which order is dated after July 1, 1983, shall hold a vested right for payment plus interest as provided in G.S. 24-1 once the Fund reaches a sufficient level for payments. Authorized payments which cannot be made due to the lack of funds will be paid as funds become available, beginning with those payments which have been unsatisfied for the longest period of time."

SECTION 12. This act is effective when it becomes law.

Principal Clerk ____
Reading Clerk ____

CORRECTED NOTICE – Sen. Bill 1500 will not be heard at this meeting.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 26, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 554	Assault Disabled Person/Institutional Setting-AB	Representative Insko
HB 995	Increase Penalty/Starvation of Animals.	Representative McElraft
HB 1347	False Report/Mass Violence at School.	Representative Faison Representative Holloway Representative Folwell
HB 1482	Amend Civil No-Contact Order Laws.	Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
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HB 995	Increase Penalty/Starvation of Animals.	Representative McElraft
HB 1347	False Report/Mass Violence at School.	Representative Faison Representative Holloway Representative Folwell
HB 1482	Amend Civil No-Contact Order Laws.	Representative Glazier
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 26, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 554	Assault Disabled Person/Institutional Setting-AB	Representative Insko
HB 995	Increase Penalty/Starvation of Animals.	Representative McElraft
HB 1347	False Report/Mass Violence at School.	Representative Faison Representative Holloway Representative Folwell
HB 1482	Amend Civil No-Contact Order Laws.	Representative Glazier

Presentations

Other Business

Adjournment

SENATE JEDICIARY II COMMITTEE

Minutes

June 26, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 26, 2007, with fifteen members present. He introduced pages Zach Turner, David Cummings, Megan Luke, Fritz Barnewolt and William Heathcote.

HB 1347 (False Report/Mass Violence at School.) Senator Hartsell recognized Representative Holloway to explain the bill. Representative Holloway answered Senator Goodall's question. Senator Apodaca moved for a favorable report. All voted and the motion carried.

HB 554 (Assult Disabled Person/Institutional Setting-AB) Representative Insko was recognized to explain the bill. Kory Goldsmith, Staff Attorney, gave additional explanation. Questions from Senators Goodall and East were answered by Representative Insko. Senator East moved for a favorable report. All voted and the motion carried.

HB 995 (Increase Penalty/Starvation of Animals.) Senator Allran chaired the meeting in Senator Hartsell's absence and noted there was a Proposed Committee Substitute and asked for a motion to accept it for purposes of discussion. Senator Goodall so moved and the motion carried. Representative McElraft was recognized to explain the bill. Senator Goodall moved for a favorable report. All voted and the motion carried. Senator Bingham moved to recall the bill for purposes of an amendment. All voted and the motion carried. Senator Bingham presented an amendment and moved that it be adopted. All voted and the motion carried. Ben Popkin, Staff Attorney, explained the amendment. Representative Gibson spoke in favor of the amendment. After much discussion, Senator Goodall moved for a favorable report to the bill as amended, unfavorable to the original bill, and rolled into a new committee substitute. All voted and the motion carried.

HB 1482 (Amend Civil No-Contact Order Laws.) Representative Glazier was recognized to explain the bill. Senator East moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 26, 2007

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

FAVORABLE

H.B.(CS #2) **554** Assault Disabled Person/Institutional Setting-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **1347** False Report/Mass Violence at School.
Sequential Referral: None
Recommended Referral: None

H.B. **1482** Amend Civil No-Contact Order Laws.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 26, 2007

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

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

H.B. **995** Increase Penalty/Starvation of Animals.

Draft Number:	PCS 50718
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NCAE
Jim Stegall	U.C.P.S.
Bill O'Donnell	NCSBA
[illegible]	Staff
Jon Williams	CCPS
Penny Griffin	Daily Bulletin
Julia Leggett	The Arc of NC
Abby Carter Emanuelson	NMSS
[illegible]	NCJP
Nicole Paquette	APA
[illegible]	Nelson Mullins

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 26, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NCDOC
Patricia G. Young	MOD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 554

Committee Substitute Favorable 3/26/07

Short Title: Assault Disabled Person/Institutional Setting-AB (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR ASSAULT ON A PATIENT IN A HEALTH CARE FACILITY OR RESIDENT OF A RESIDENTIAL CARE FACILITY WHEN THE CONDUCT EVINCES A PATTERN OF BEHAVIOR, IS WILLFUL OR CULPABLY NEGLIGENT, AND CAUSES BODILY INJURY TO THE PATIENT OR RESIDENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-32.2(b) reads as rewritten:

"(b) Unless the conduct is prohibited by some other provision of law providing for greater punishment.

(1) A violation of subsection (a) above is a Class C felony where intentional conduct proximately causes the death of the patient or resident;

(2) A violation of subsection (a) above is a Class E felony where culpably negligent conduct proximately causes the death of the patient or resident;

(3) A violation of subsection (a) above is a Class F felony where such conduct is willful or culpably negligent and proximately causes serious bodily injury to the patient or ~~resident.~~ resident;

(4) A violation of subsection (a) is a ~~Class A1 misdemeanor~~ Class H felony where such conduct evinces a pattern of conduct and the conduct is willful or culpably negligent and proximately causes bodily injury to a patient or resident."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 554:
Assault Disabled Person/Institutional Setting-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 25, 2007
Introduced by:	Rep. Insko	**Summary by:**	Kory Goldsmith
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 554 increases the criminal penalty for assault on a patient in a health care facility or resident of a residential care facility under certain circumstances.

BILL ANALYSIS: House Bill 554 increases the criminal penalty for physically abusing a patient of a health care facility or a resident of a residential care facility, when the abuse results in death or bodily injury, and where such conduct evinces a pattern of conduct and the conduct is willful or culpably negligent and proximately causes bodily injury to a patient or resident. Currently, this behavior is punishable as a Class A1 misdemeanor. House Bill 554 would increase the penalty to a Class H felony.

A Class A1 misdemeanor is punishable by an absolute minimum of 1-60 days community punishment to an absolute maximum of 150 days active punishment, depending on the offender's prior record, and also by a fine within the discretion of the judge.

For a person with no prior convictions, a Class H felony is punishable by a presumptive minimum of 5 months community, intermediate, or active punishment and a presumptive maximum of 8 months community, intermediate, or active punishment.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

§ 14-32.2. Patient abuse and neglect; punishments.

(a) It shall be unlawful for any person to physically abuse a patient of a health care facility or a resident of a residential care facility, when the abuse results in death or bodily injury.

(b) Unless the conduct is prohibited by some other provision of law providing for greater punishment,

(1) A violation of subsection (a) above is a Class C felony where intentional conduct proximately causes the death of the patient or resident;

(2) A violation of subsection (a) above is a Class E felony where culpably negligent conduct proximately causes the death of the patient or resident;

(3) A violation of subsection (a) above is a Class F felony where such conduct is willful or culpably negligent and proximately causes serious bodily injury to the patient or resident.

(4) A violation of subsection (a) is a Class A1 misdemeanor where such conduct evinces a pattern of conduct and the conduct is willful or culpably negligent and proximately causes bodily injury to a patient or resident.

(c) "Health Care Facility" shall include hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned.

(c1) "Residential Care Facility" shall include adult care homes and any other residential care related facility whether publicly or privately owned.

(d) "Person" shall include any natural person, association, corporation, partnership, or other individual or entity.

(e) "Culpably negligent" shall mean conduct of a willful, gross and flagrant character, evincing reckless disregard of human life.

(e1) "Abuse" means the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health or welfare of a patient or resident.

(f) Any defense which may arise under G.S. 90-321(h) or G.S. 90-322(d) pursuant to compliance with Article 23 of Chapter 90 shall be fully applicable to any prosecution initiated under this section.

(g) Criminal process for a violation of this section may be issued only upon the request of a District Attorney.

(h) The provisions of this section shall not supersede any other applicable statutory or common law offenses.

Susan Sitze, counsel to House Judiciary I, substantially contributed to this summary.

H0554e2-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 554 (Second Edition)

SHORT TITLE: Assault Disabled Person/Institutional Setting-AB

SPONSOR(S): Representative Insko

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction	**No significant impact anticipated. Exact amount cannot be determined. See Assumptions and Methodology – p. 2-3**				
Judicial	**No significant impact anticipated. Exact amount cannot be determined. See Assumptions and Methodology – p. 3**				
TOTAL EXPENDITURES:	**Amount cannot be determined.**				
ADDITIONAL PRISON BEDS: (cumulative)*	**Amount cannot be determined.**				
POSITIONS: (cumulative)	**Amount cannot be determined.**				

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

EFFECTIVE DATE: December 1, 2007.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Under current G.S. 14-32.2, it is a Class A1 misdemeanor to physically abuse a patient of a health care facility or resident of a residential care facility, when such conduct evinces a pattern of conduct that is "willful or culpably negligent and proximately causes bodily

injury to a patient or resident." The second edition of H.B. 554 increases the penalty for such offense to a Class H felony. The act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

If only one future charge were to become subject to the proposed penalty enhancement, there would be some fiscal impact. However, given the low number of prior year charges and convictions for this particular offense (G.S. 14-32.2(b)(4)), this proposal is not expected to generate a significant fiscal impact.

Department of Correction – Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Class A1 misdemeanants sentenced to active punishment typically serves the designated term of incarceration within a local jail.[1] In contrast, most active sentences for felony convictions are served in state prison.[2] In FY 2005-06, the average estimated time served for a Class H felony offense was 11 months; the average estimated time served for a Class A1 misdemeanor offense was 50 days. *Accordingly, the proposed penalty enhancement (Class H felony) will not only lengthen time served for the affected offense, but also necessitate imprisonment within a state facility.*

In FY 2005-06, there was one Class A1 misdemeanor conviction for patient abuse and neglect, under G.S. 14-32.2(b)(4). Based on this low number of convictions, Fiscal Research does not anticipate that the proposed enhancement will have a significant impact on the prison population. However, the actual numbers of future offenses, convictions, and resultant active sentences could vary.

For illustration, *if three Class H felony convictions were to occur under this proposal per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first applicable year; two additional prison beds in the second year; and one new employee in the second year.* Assuming this threshold and inmate assignment to medium custody, the construction of two prison beds within a new, stand alone facility could cost the State $136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately $84,240.[3] These costs are attributed to FY 2007-08 since the construction of

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[1] In FY 2005-06, 26% of Class A1 misdemeanor convictions (for all crimes and prior record levels) received active sentences, with an average estimated time served of 50 days; 34% of Class H felony convictions received active sentences, with an average estimated time served of 11 months.

[2] Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties $18 for each day that offenders are housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

[3] New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total $28,250 in FY 2008-09, and $58,195 in FY 2009-10.[4]

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in non-active, intermediate or community sentences. Thus, *assuming that future convictions for the enhanced offense were to occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its supervision.* It is not known exactly how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC $1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of $0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from $7.71 to $14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated $14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

Based on preliminary data for calendar year 2006, there were 5 defendants charged with a Class A1 misdemeanor under G.S. 14-32.2. Given this low number of charges, the proposed penalty enhancement is not expected to generate a significant impact on the court system.

Under the proposed enhancement, from a Class A1 misdemeanor to a Class H felony, alleged violators of G.S. 14-32.2(b)(4) would be tried in superior court, rather than district court. This elevation to superior court would increase jury involvement, and potentially workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel. Moreover, because defendants would be subject to longer sentences, it is anticipated that more cases would result in trial, rather than guilty plea.

Assuming that five cases were to occur per year, and that a higher percentage would result in trial, the AOC estimates that this penalty enhancement could cost an additional $495 in the first full applicable year; $519 in the second year. These cost estimates are based on projected court-time requirements for judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings. Actual court-time costs may vary with time requirements and disposition (i.e. trial or plea).

"Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

[4] Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and, Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: March 27, 2007

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 995

Short Title:	Increase Penalty/Starvation of Animals.	(Public)
Sponsors:	Representatives McElraft; Allred, Avila, Boylan, Current, Dollar, Fisher, Folwell, Frye, Glazier, T. Harrell, Harrison, Hilton, Howard, Hurley, Insko, Lewis, McComas, McGee, Moore, Neumann, Samuelson, Stam, Tillis, Underhill, Walker, and Wiley.	
Referred to:	Judiciary III.	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE INTENTIONAL STARVATION OF AN ANIMAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-360 reads as rewritten:

"**§ 14-360. Cruelty to animals; construction of section.**

(a) If any person shall intentionally overdrive, overload, wound, injure, torment, or kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor.

(b) If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or kill by intentional deprivation of necessary sustenance, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, or killed by intentional deprivation of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a Class I felony. However, nothing in this section shall be construed to increase the penalty for cockfighting provided for in G.S. 14-362.

(c) As used in this section, the words "torture", "torment", and "cruelly" include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word "intentionally" refers to an act committed knowingly and without justifiable excuse, while the word "maliciously" means an act committed intentionally and with malice or bad motive. As used in this section, the term "animal" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. However, this section shall not apply to the following activities:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

(3) Activities conducted for lawful veterinary purposes.

(4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 995
PROPOSED SENATE COMMITTEE SUBSTITUTE H995-CSRD-31 [v.2]

6/25/2007 5:09:17 PM

Short Title: Increase Penalty/Starvation of Animals. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE MALICIOUS, INTENTIONAL STARVATION OF AN ANIMAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-360 is amended by adding a new subsection to read:

"(a1) If any person shall maliciously kill, or cause or procure to be killed, any animal by intentional deprivation of necessary sustenance, that person shall be guilty of a Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 995:
Increase Penalty/Starvation of Animals

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 25, 2007
Introduced by:	Rep. McElraft	**Summary by:**	Ben Popkin
Version:	PCS to First Edition H995-CSRD		Committee Counsel

SUMMARY: ***House Bill 995 would increase the penalty for killing an animal by intentionally depriving it of sustenance. The Proposed Committee Substitute would enact a new subsection of G.S. 14-360 that would create a new Class A1 misdemeanor offense for maliciously killing an animal by intentional deprivation of necessary sustenance.***

CURRENT LAW: G.S. 14-360(a) makes it a Class 1 misdemeanor to intentionally kill an animal or deprive an animal of necessary sustenance. G.S. 14-360(b) makes it a Class I felony to maliciously kill an animal, but there is no specific language in the felony offense that addresses depriving an animal of necessary sustenance. This section has been interpreted to mean that depriving an animal of necessary sustenance (even if it is malicious and leads to the animal's death) is only covered under subsection (a) as a misdemeanor.

The presumptive minimum sentence for a Class 1 misdemeanor is community punishment of 1 – 45 days and a fine at the discretion of the court. The presumptive minimum sentence for a Class I felony is community punishment of 4 – 6 months and a fine in the discretion of the court.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 995 would enact a new subsection (a1) of G.S. 14-360 that would create a new Class A1 misdemeanor offense for "... maliciously killing an animal by intentional deprivation of necessary sustenance...".

The presumptive minimum sentence for a Class A1 misdemeanor offense is active, intermediate or community punishment of 1 – 60 days and a fine at the discretion of the court.

EFFECTIVE DATE: The bill would become effective December 1, 2007, and would apply to offenses committed on or after that date.

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

H0995e1-SMRD-CSRD

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 995

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

H995-ARF-8 [v.1]

Date _____,2007

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

Representative _____

moves to amend the bill on page 1, line 3 by rewriting that line to read:
"STARVATION OF AN ANIMAL AND MAKE OTHER CHANGES TO THE ANIMAL CRUELTY STATUTE."; and
Further amends the bill on page 1, between lines 8 and 9 by adding a new section to read:

"**SECTION 2.** G.S. 14-360(c) reads as rewritten:

"(c) As used in this section, the words "torture", "torment", and "cruelly" include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word "intentionally" refers to an act committed knowingly and without justifiable excuse, while the word "maliciously" means an act committed intentionally and with malice or bad motive. As used in this section, the term "animal" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. However, this section shall not apply to the following activities:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

(3) Activities conducted for lawful veterinary purposes.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 995

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

H995-ARF-8 [v.1]

(4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health.
(5) The physical alteration of livestock or poultry for the purpose of conforming with breed or show standards." ; and

Further amends the bill on page 1, lines 9 and 10 by rewriting those lines to read:

"**SECTION 3.** Section 1 of this act becomes effective December 1, 2007, land applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1347

Committee Substitute Favorable 5/4/07

Short Title: False Report/Mass Violence at School. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO MAKE A FALSE REPORT CONCERNING A THREAT OF MASS VIOLENCE ON EDUCATIONAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.5. Making a false report concerning mass violence on educational property.**

(a) The following definitions apply in this section:

(1) Educational property. – As defined in G.S. 14-269.2.

(2) Mass violence. – Physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people.

(3) School. – As defined in G.S. 14-269.2.

(b) A person who, by any means of communication to any person or groups of persons, makes a report, knowing or having reason to know the report is false, that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school, is guilty of a Class H felony.

(c) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1347:
False Report/Mass Violence at School

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 25, 2007
Introduced by:	Reps. Holloway, Faison, Folwell	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	Second Edition		

SUMMARY: House Bill 1347 makes it a Class H felony to make a false report concerning mass violence on educational property.

CURRENT LAW: Under G.S. 14-69.1, making a false bomb report concerning a public building (including educational property) is a Class H felony. Educational property is defined in G.S. 14-269.2 as *"Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school"*; a school is *"A public or private school, community college, college, or university."* The court may order a person convicted of this offense to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report. A second conviction of the offense within a 5 year period is a Class G felony.

BILL ANALYSIS: House Bill 1347 would make it a Class H felony to communicate (by mail, phone, text message, fax, electronic mail, or other electronic means) a false report that an act of mass violence is going to occur on educational property or at an activity sponsored by a school. Mass violence is defined as physical injury that could lead to permanent injury or death to two or more people. Assuming there are no prior convictions, the presumptive minimum sentence for a Class H felony is 5-6 months community, intermediate, or active punishment. The bill would authorize the court to order a person convicted of this offense to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report.

EFFECTIVE DATE: The bill would become effective December 1, 2007, and apply to offenses committed on or after that date.

Brenda J. Carter, counsel to House Judiciary III, substantially contributed to this summary.

H1347e2-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1347 (Second Edition)

SHORT TITLE: False Report/Mass Violence at School.

SPONSOR(S): Representatives Faison, Folwell, and Holloway

FISCAL IMPACT

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

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
GENERAL FUND					
Correction	**No significant impact anticipated; exact amount cannot be determined.**				
Judicial	**No significant impact anticipated; exact amount cannot be determined.**				
TOTAL EXPENDITURES:	**Amount cannot be determined.**				
ADDITIONAL PRISON BEDS: (cumulative)*	**Amount cannot be determined.**				
POSITIONS: (cumulative)	**Amount cannot be determined.**				

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

EFFECTIVE DATE: December 1, 2007.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Enacts new G.S. 14-277.5, which makes it a Class H felony offense for a person to knowingly, or having reason to know, communicate a *false report* that an act of mass violence is *going to occur* on educational property or at a curricular or extracurricular activity sponsored by a school (as defined by G.S. 14-269.2). Defines "mass violence" as "physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) *or* death to two or more people." Provides that the court may order a person convicted under this act to pay restitution, including costs and consequential damages. Effective for offenses committed on or after December 1, 2007.

Source: Adapted from Bill Digest H.B. 1347 (04/05/0200) – emphasis added by Fiscal Research.

ASSUMPTIONS AND METHODOLOGY:

General

Based on current Courts and Corrections resources, any new charge and/or conviction for the proposed offense will generate some additional fiscal impact. However, because the offense is new, there is no historical data from which to accurately project future charge and conviction rates, and therefore the impact of this proposal. Nonetheless, *the nature of the offense does not suggest this proposal will have a significant fiscal impact* (e.g. FRD does not anticipate a significant number of new charges and convictions resulting). For comparison, there were only five convictions in FY 2005-06 for the similar offense of *making a false report of a destructive device*, under G.S. 14-69.1(c) (also a Class H felony offense).

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Because this is a new offense, there is no historical data from which to estimate its potential impact on the prison population. In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. For illustration, if three Class H convictions occur for the proposed offense annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; two additional beds in the second year; and one new employee in the second year.*

Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State $136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately $84,240.[1] These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total $58,196 by FY 2009-10.[2]

Department of Correction – Division of Community Corrections

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[1] New, "stand alone" institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

"Add-on" facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody "add-on" is built adjacent to an existing perimeter. "Add-on" facilities employ the same EOC custody configurations as "stand alone" (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

[2] Impact on incarcerated population is assumed for FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future convictions for the proposed offense occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

General supervision of intermediate and community offenders by a probation officer costs $1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction is much higher, ranging from $7.71 to $14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated $14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

There is no historical data from which to estimate the number of charges that might occur for the proposed offense. However, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. Presently, the estimated costs per Class H felony trial and plea are $7,345 and $325, respectively.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 8, 2007

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1482

Short Title:	Amend Civil No-Contact Order Laws.	(Public)
Sponsors:	Representatives Glazier; and Harrison.	
Referred to:	Judiciary II.	

April 16, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN DEFINITIONS UNDER THE LAWS PERTAINING TO CIVIL NO-CONTACT ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-1 reads as rewritten:

"**§ 50C-1. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – To physically or mentally harm, harass, intimidate, or interfere with the personal liberty of another.

(2) Civil no-contact order. – An order granted under this Chapter, which includes a remedy authorized by G.S. 50C-5.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Repealed by Session Laws 2004-199, s. 50, effective August 17, 2004.

(6) Stalking. – ~~Following on more than one occasion~~On more than one occasion, following or otherwise harassing, as defined in G.S. 14-277.3(c), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued

harassment and that in fact causes that person substantial emotional distress.

(7) Unlawful conduct. – The commission of one or more of the following acts by a person 16 years of age or older upon a person, but does not include acts of self-defense or defense of others:

a. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

b. Stalking.

(8) Victim. – A person against whom an act of unlawful conduct has been committed by another person not involved in a personal relationship with the person as defined in G.S. 50B-1(b)."

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

HOUSE BILL 1482:
Amend Civil No-Contact Order Laws

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 25, 2007
Introduced by:	Rep. Glazier	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1482 would amend two definitions pertaining to civil no-contact orders.

BACKGROUND: In 2004, the General Assembly enacted statutes creating civil no-contact protective orders. Courts can issue these protective orders in situations where a person has been a victim of stalking or nonconsensual sexual conduct committed by a person with whom the victim is not in a domestic relationship.

CURRENT LAW: Under the Civil No-Contact Orders statutes, "unlawful conduct" is defined as the commission of one or more of acts of (i) nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct or (ii) stalking. The definition of unlawful conduct does not include acts of self-defense or defense of others.

BILL ANALYSIS: House Bill 1482 would clarify the definition of "stalking" by reorganizing the sentence and amend the definition of "unlawful conduct" by stating that the acts have to be committed by a person of 16 years of age or older in order to meet the definition of "unlawful conduct".

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

Drupti Chauhan, counsel to House Judiciary II, substantially contributed to this summary.

H1482e1-SMRI

Principal Clerk ____
Reading Clerk ____

Corrected notice – SB 657 deleted and HB 1359 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 28, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1477	Inherently Dangerous Animals.	Senator Jones
HB 38	Missing Persons Alert/Persons w/Dementia.	Representative Earle Representative Parmon Representative Womble Representative Insko
HB 183	Ban Cell Phone Use by School Bus Drivers.	Representative Goforth Representative Saunders Representative Rapp Representative Glazier
HB 1359	Immunity/Vets Reporting Animal Cruelty.	Representative Cleveland Representative Wiley Representative McElraft Representative Hurley

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 28, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 657	Omnibus Civil Rights Act.	Senator Dannelly
SB 1477	Inherently Dangerous Animals.	Senator Jones
HB 38	Missing Persons Alert/Persons w/Dementia.	Representative Earle Representative Parmon Representative Womble Representative Insko
HB 183	Ban Cell Phone Use by School Bus Drivers.	Representative Goforth Representative Saunders Representative Rapp Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 28, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1477	Inherently Dangerous Animals.	Senator Jones
HB 38	Missing Persons Alert/Persons w/Dementia.	Representative Earle Representative Parmon Representative Womble Representative Insko
HB 183	Ban Cell Phone Use by School Bus Drivers.	Representative Goforth Representative Saunders Representative Rapp Representative Glazier
HB 1359	Immunity/Vets Reporting Animal Cruelty.	Representative Cleveland Representative Wiley Representative McElraft Representative Hurley

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

June 28, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 28, 2007, with fifteen members present. Senator Hartsell introduced pages David Cummings, Caitlin Gillis, Zach Turner and William Heathcote and thanked them for their service.

HB 1359 (Immunity/Vets Reporting Animal Cruelty.) Representative Wiley was recognized to explain the bill. She then answered Senator Goodall's question. Senator Berger moved for a favorable report. All voted and the motion carried.

SB 1477 (Inherently Dangerous Animals.) Senator Hartsell noted there was a Proposed Committee Substitute and asked for a motion to accepted it for purposes of discussion. Senator Bingham so moved, all voted and the motion carried. Senator Jones was recognized to explain the bill. Ms. Jennifer McGinnis, Staff Attorney, gave additional explanation. Questions from Senators Goodall, Jacumin and East were answered by Senator Jones and Ms. MsGinnis. Speaking in favor of the bill were: Mr. Roger Bone and Ms. Nicole Paquette, both representing the Animal Protection Institute; Ms. Rebecca Mastin, Principal of Moravian Falls Elementary School, Mr. John Sauls, Animal Control Officer, and Ms. Elizabeth Self of the Department of Environment and Natural Resources.

Senator Hartsell noted that due to time constraints the bill would be continued at the following meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 28, 2007

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

FAVORABLE

H.B. **1359** Immunity/Vets Reporting Animal Cruelty.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-28-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Knight	Wyrick Robbins
Mindy Skinner	Conservators' Center, Inc., AZS, NCEAHA, FCF PO Box 882 Mebane NC 27302
Doug Evans	PO Box 882, Mebane, NC. 27302 FCF. Conservators' Center, Inc., NCAZS, NCEAHA
Tanith Tyer	20 Orange St. Wilmington NC 28401 Cape Fear Serpentarium
Robert Tregembo	TREGEMBO ANIMAL PARK 5811 CAROLINA BEACH RD Wilmington N.C. 28412
PAT FAIRCLOTH	222 FAIRCLOTH DR CHAPEL HILL NC 28431 LITTLE MANS 200
Dr. Miava Pinkley	USDA Raleigh, NC
Dora Turner	Nauts Landing - USDA Licensed 1489 Livestock Rd N.C. Exotic Animal Carts, N.C. 27521 Assoc.
John Mahyl	GOV OFFICE
Susanne Stubb	NCRA
Hunter Dalton	NCRMA
Andy Ellen	NCRMA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-28-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dr Dan Johnson Veterinarian	Avian & Exotic Animal Care, PA 6300-104 Creedmoor Rd Ral. NC 27612
Elizabeth Surf	DENR
Robin Smith	DENR
LORRAINE Smith	NCZP
John Sauls	Chatham Co Animal Control NC Animal Law Comm.
Judy McConnell	I06
Bob Ford	NC Poultry Fed
Henry Jones	Attorney Raleigh
Alvin Braswell	NC State Museum of Nat. Sci.
Phil Bradley	NC State Museum of Natural Sciences
Walter Sturgeon	P.O. Box 1251 Spring Hope, NC 27882

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-28-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Hamilton	NC WRC
Richard Hamilton	NC WRC
Karisa Derence	NC DARS
Fran Nolan	OSBC
Lu Ann Bowman	DOC
Paul Pulley	NCATL
Tommy Stevens	NCPC
Colleen Kochanek	Smith Moore
Kelley Barker	WCS
Rebecca Martin	WCS
Tod Jr	NCDA & CS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 28, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dr. Tom Roy	NCDA&CS, 2W Edenton St. Raleigh
Erin Schwaltzly	UNC
Bill O'Donnell	NCSBA
ROBERT REDER	HUMANE SOCIETY OF THE U.S. RALEIGH STATE OFFICE
Katherine Joyce	NCASA
DANIEL BAUM	KENNEDY COMMISSION
Richard S. Boulden	NC Human Relations Commission
[illegible]	Bar Association
[illegible]	AP
[illegible]	NCAAP
Kevin Kirksey Zander	"
ED SMITH	"

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 38

Committee Substitute Favorable 4/4/07

Short Title: Missing Persons Alert/Persons w/Dementia. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PUBLIC ALERT TO BE ISSUED WHEN A PERSON WITH DEMENTIA OR OTHER COGNITIVE IMPAIRMENT IS REPORTED MISSING, TO INCLUDE CAREGIVERS AMONG THOSE WHO CAN REPORT AN INDIVIDUAL MISSING, AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE PROVISIONS CONCERNING THE NORTH CAROLINA CENTER FOR MISSING PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499 reads as rewritten:

"**§ 143B-499. Submission of missing person reports to the Center.**

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual may submit a missing person report to the Center of any missing child or missing person, regardless of the circumstances, after having first submitted a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing, regardless of the circumstances."

SECTION 2. G.S. 143B-499.1 reads as rewritten:

"**§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child."

SECTION 3. G.S. 143B-499.3 reads as rewritten:

"§ 143B-499.3. Duty of individuals to notify Center and law-enforcement agency when missing person has been located.

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual who submits a missing person report to a law-enforcement agency or to the Center, shall immediately notify the law-enforcement agency and the Center of any individual whose location has been determined. The Center shall confirm the deletion of the individual's records from the FBI/NCIC's missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law-enforcement agency having jurisdiction of the records."

SECTION 4. G.S. 143B-499.5 reads as rewritten:

"§ 143B-499.5. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in G.S. 143B-499~~143B-499.3~~ of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting."

SECTION 5. Part 5A of Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-499.8. North Carolina Silver Alert System established.

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the information as quickly as possible when the missing person is 18 years of age or older, and the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive

impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing adult meeting the criteria of this subsection when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 183

Committee Substitute Favorable 4/30/07

Committee Substitute #2 Favorable 5/15/07

Short Title: Ban Cell Phone Use by School Bus Drivers. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY OR A MOBILE TELEPHONE TO ENGAGE IN A CALL WHILE OPERATING A PUBLIC OR PRIVATE SCHOOL BUS, WHILE OPERATING A SCHOOL ACTIVITY BUS, OR WHILE PROVIDING CONTRACTED TRANSPORTATION SERVICES FOR A PUBLIC OR PRIVATE SCHOOL IN ANY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-140.6. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Additional technology. – Any technology that provides access to digital media such as a handheld camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access such service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(4) Use. – Hold a mobile telephone to, or in the immediate proximity of, the user's ear or use a hands-free mobile telephone device to engage in a call.

(5) Engage in a call. – Talking into or listening on a mobile telephone but shall not include holding a mobile telephone to activate, deactivate, or initiate a function of such telephone.

(6) Immediate proximity. – That distance as permits the user of a mobile telephone to hear telecommunications transmitted over such mobile telephone but shall not require physical contact with such user's ear.

(7) Emergency situation. – A situation in which medical concerns, unsafe road conditions, public safety concerns, or mechanical failures create a risk of harm for the operator or passengers of a public or private school bus or a school activity bus or a vehicle providing contracted transportation services for a public or private school.

(b) Offense. – Except as otherwise provided in this section, no person shall use additional technology or a mobile telephone to engage in a call while operating a public or private school bus or a school activity bus or while providing contracted transportation services for a public or private school in any vehicle. An operator of a public or private school bus or school activity bus or other contracted vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her ear while such vehicle is being operated is presumed to be engaging in a call within the meaning of this section. The presumption established by this subsection is rebuttable by evidence tending to show that the operator was not engaged in a call.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone or additional technology, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone or additional technology for the sole purpose of communicating in an emergency situation.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones or additional technology by operators of the vehicles specified in subsection (b) of this section.

(f) A violation of this section shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00)."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1359

Short Title:	Immunity/Vets Reporting Animal Cruelty.	(Public)
Sponsors:	Representatives Wiley, Hurley, McElraft, Cleveland (Primary Sponsors); Adams, Allen, Barnhart, Blue, Blust, Brisson, Brown, Carney, Coates, Coleman, Cotham, Current, Daughtry, Dockham, Dollar, Fisher, Glazier, Goodwin, Grady, Gulley, T. Harrell, Harrison, Hilton, Jeffus, Johnson, Jones, Justice, Langdon, Lewis, McGee, Mobley, Moore, Neumann, Parmon, Pate, Pierce, Ray, Ross, Samuelson, Stiller, Thomas, Underhill, Walend, Walker, R. Warren, West, Wray, and Wright.	
Referred to:	Judiciary III.	

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE VETERINARIANS WITH IMMUNITY FROM LIABILITY FOR REPORTING ANIMAL CRUELTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 47 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-360.1. Immunity for veterinarian reporting animal cruelty.**

Any veterinarian licensed in this State who has reasonable cause to believe that an animal has been the subject of animal cruelty in violation of G.S. 14-360 and who makes a report of animal cruelty, or who participates in any investigation or testifies in any judicial proceeding that arises from a report of animal cruelty, shall be immune from civil liability, criminal liability, and liability from professional disciplinary action and shall not be in breach of any veterinarian-patient confidentiality, unless the veterinarian acted in bad faith or with a malicious purpose. It shall be a rebuttable presumption that the veterinarian acted in good faith. A failure by a veterinarian to make a report of animal cruelty shall not constitute grounds for disciplinary action under G.S. 90-187.8."

SECTION 2. This act becomes effective October 1, 2007.

HOUSE BILL 1359:
Immunity/Vets Reporting Animal Cruelty

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 27, 2007
Introduced by:	Reps. Wiley, Hurley, McElraft, Cleveland	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1359 would provide veterinarians with immunity from liability for reporting animal cruelty.

CURRENT LAW:

Animal Cruelty: The law regarding cruelty to animals is set out in Article 47, Chapter 14 of the General Statutes. Under G.S. 14-360 it is a Class 1 misdemeanor to *"intentionally overdrive, overload, wound, injure, torment, kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal."*

It is a Class I felony to *"maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal."*

Veterinarian/Client Privilege:

North Carolina does not have a statute that specifically provides for veterinarian-client confidentiality.

The confidential relationship that exists between physicians and their patients does not necessarily exist between veterinarians and their clients. Courts in some states have refused to recognize a veterinarian client privilege; however, other states do uphold veterinarian-client confidentiality.

However, with regard to physicians the general rule is that unless the patient/decedent waives the privilege, a physician is not allowed to disclose any information acquired in attending to the patient in a professional capacity. Courts generally allow a cause of action for a breach of confidentiality against a treating physician who divulges confidential medical information without proper authorization from the patient. However, there are exceptions relating to the abuse or neglect of a child, gunshot wounds and other injuries that appear to be related to criminal acts of violence.

BILL ANALYSIS:

House Bill 1359 would amend the law regarding cruelty to animals by adding a new section, G.S. 14-360.1, to Article 47 granting immunity for veterinarians reporting animal cruelty in violation of G.S. 14-360. The bill would provide that any veterinarian who makes a report of animal cruelty, or who participates in any investigation or testifies in a judicial proceeding that arises from a report of animal cruelty, would be immune from civil or criminal liability, and liability from professional disciplinary action or breach of any veterinarian-patient confidentiality, provided the veterinarian did not act in bad faith or with a malicious purpose. Failure to report animal cruelty would not be grounds for disciplinary action under the Veterinary Practice Act.

EFFECTIVE DATE: The bill would become effective October 1, 2007.

Brenda Carter, counsel to House Judiciary III, substantially contributed to this summary.

H1359e1-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1477

Short Title:	Inherently Dangerous Animals.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT INHERENTLY DANGEROUS ANIMALS POSE AND TO PROTECT THE WELFARE OF INHERENTLY DANGEROUS ANIMALS.

The General Assembly of North Carolina enacts:

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

"Article 7.

"Protection of Inherently Dangerous Animals.

"**§ 19A-80. Definitions.**

(a) "Animal control authority" means the municipal or county animal control agency, or a county sheriff in an area that does not have an animal control agency.

(b) "Inherently dangerous animal" means any nondomesticated animal for which evidence demonstrates that unprotected human contact with the species can result in a life threatening injury or disease to those who come in contact directly or indirectly. The following are examples of inherently dangerous animals:

(1) Class Mammalia:

a. Order Chiroptera – all bats.

b. Order Carnivora:

1. Family Canidae – only wolves and wolf hybrids.

2. Family Felidae – only lions, tigers, cheetahs, jaguars, cougars, leopards, snow leopards, clouded leopards.

3. Hyaenidae – all hyena species.

4. Family Ursidae – all bear species.

c. Order Primates – all species including apes, Old and New World monkeys, and prosimians.

d. Order Proboscidae – all elephant species.

e. Order Perissodactyla – only rhinoceroses.

f. Order Artiodactyla:
1. Family Hippotamidae – all species of hippopotamus.
2. Family Bovidae – only gaur, banteng, kouprey, anoa, Cape buffalo.

(2) Class Reptilia:
a. Order Crocodilia – all species.
b. Order Squamata:
1. Family Helodermatidae – all species.
2. Family Boidae – only green anaconda.
3. Family Pythonidae – only Amethystine python, African rock python, and Reticulated python.
4. All venomous snakes not indigenous to North Carolina.

(c) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative of the entity.

(d) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, an inherently dangerous animal.

(e) "Wildlife sanctuary" means a facility that cares for inherently dangerous animals and:

(1) Is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code;

(2) Does not commercially trade in animals listed as inherently dangerous animals, including the offspring, parts, and by-products of such animals;

(3) Does not propagate animals; and

(4) Does not allow direct contact between the public and animals.

"**§ 19A-81. Exemptions.**

(a) The provisions of this Article do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).

(2) Duly incorporated nonprofit animal protection organizations housing an inherently dangerous animal at the written request of the animal control authority.

(3) Federal or State wildlife enforcement officers acting under the scope of their authority.

(4) Animal control or law enforcement agencies or officers acting under the authority of this act.

(5) Licensed veterinary hospitals or clinics.

(6) Any wildlife sanctuary as defined in G.S. 19A-80(e).

(7) A university, college, laboratory, or other research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.D.A. § 2131.

(8) Circuses, defined as incorporated, Class C licensees under the Animal Welfare Act, 7 U.S.D.A. § 2131, as amended, that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any listed animal to the public as part of a carnival or for the purpose of (i) exhibition; or (ii) entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.

(9) A person who does not reside in this State and is traveling through this State with listed species if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(10) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

"**§ 19A-82. Keeping of inherently dangerous animals.**

(a) Except as otherwise provided in this Article, it is unlawful for a person to import into, possess, purchase, breed, or sell within this State, by any means, an inherently dangerous animal, including transactions conducted via the Internet.

(b) A person in legal possession of an inherently dangerous animal prior to January 1, 2008, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life, subject to the following conditions:

(1) The person shall maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to the effective date of this statute.

(2) The person shall present paperwork described in subdivision (1) of this subsection to an animal control or law enforcement authority upon request.

(3) The person shall be in compliance with the provisions set forth in G.S. 19A-83.

(c) A legally-possessed inherently dangerous animal shall not be replaced by a person who does not have an exemption as established in G.S. 19A-81.

"**§ 19A-83. Conditions under which grandfathered animals can be kept.**

A person who is in legal possession of an inherently dangerous animal prior to January 1, 2008, may keep possession of the animal for the remainder of the animal's life under the following conditions:

(1) Within 90 days of January 1, 2008, the possessor of an inherently dangerous animal shall register with the animal control authority. The registration shall include the person's name, address, telephone number, and a complete inventory of each inherently dangerous animal that the person possesses. The inventory shall include the following information: (i) the number and species of each regulated animal; (ii) the identification of the animal pursuant to subdivision (2) of this

section; (iii) the exact location where each regulated animal is kept; and (iv) the age, sex, color, weight, and any other distinguishing marks of each regulated animal.

(2) Every inherently dangerous animal shall be uniquely identified using species appropriate, safe methods, and this identification shall be reported to the animal control authority.

(3) A possessor shall not breed an inherently dangerous animal.

(4) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon discovery that the animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a permitted animal.

(5) A possessor of an inherently dangerous animal shall notify local law enforcement and local fire departments what types of animals the possessor has.

(6) A possessor shall develop, and keep at the location where the inherently dangerous animal is being kept, a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes. This plan shall also be filed with the local sheriff's department, and police department, if applicable.

(7) A possessor shall not trade an inherently dangerous animal or replace an inherently dangerous animal that was in his or her possession prior to January 1, 2008.

(8) A possessor of an inherently dangerous animal shall obtain and maintain a liability insurance policy with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property in an amount of not less than one million dollars ($1,000,000). The possessor shall present proof of possession and maintenance of liability insurance upon request to the animal control or law enforcement authority within 24 hours of the request.

(9) In addition to complying with the requirements set forth in this section, the possessor shall comply with any and all applicable federal, State, or local law, rule, regulation, ordinance, permit, or other permission. Failure to comply with any such law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Article.

"**§ 19A-84. Enforcement of Article.**

The animal control authority and its staff and agents, local law enforcement agents, county sheriffs, and federal or State wildlife enforcement officers may enforce the provisions of this Article.

"**§ 19A-85. Inspection.**

The possessor of an inherently dangerous animal shall, at all reasonable times, allow the animal control authority or other persons designated under G.S. 19A-84 to enter the premises where the animal is kept to ensure compliance with this Article.

"**§ 19A-86. Confiscation and disposition of inherently dangerous animals.**

(a) The animal control authority or other persons designated under G.S. 19A-84 may confiscate an inherently dangerous animal under the following conditions:

(1) The animal control or other persons designated under G.S. 19A-84 has probable cause to believe that the animal was acquired after January 1, 2008;

(2) The animal poses a public safety or health risk;

(3) The animal is in poor health and condition as a result of the owner's actions or inaction; or

(4) The animal is being held in contravention of this Article.

(b) An inherently dangerous animal that is confiscated under this section may be returned to the possessor only if the animal control authority or other persons designated under G.S. 19A-84 establishes that the possessor had possession of the animal prior to January 1, 2008, the return does not pose a public safety or health risk, and the possessor is in compliance with this act.

(c) The animal control or other persons designated under G.S. 19A-84 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation.

(d) The animal control authority or other persons designated under G.S. 19A-84 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation, and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(e) If an inherently dangerous animal that is confiscated under this section is not returned to the possessor, the animal control or other persons designated under G.S. 19A-84 may release the animal to a facility such as a sanctuary or a facility exempted pursuant to G.S. 19A-81. If the animal control or law enforcement authority is unable to relocate the animal within a reasonable period of time, it may euthanize the animal.

(f) If an inherently dangerous animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under G.S. 19A-84 may exercise judgment in attempting to recapture the animal or in killing the animal.

(g) This section applies to animal confiscations on or after January 1, 2008.

"**§ 19A-87. Penalties.**

A person who violates any provision of this Article is liable for a civil penalty of not less than two hundred dollars ($200.00) and not more than two thousand dollars ($2,000) for each animal with respect to which there is a violation and for each day the violation continues.

"**§ 19A-88. Local governing bodies.**

Pursuant to its authority under G.S. 153A-131 and G.S. 160A-187, a city or county may adopt an ordinance governing inherently dangerous animals that is more restrictive than this Article. Such an ordinance may apply to animals not covered by this Article, provide caging standards, provide stricter care and treatment standards, or otherwise restrict or prohibit the possession of inherently dangerous animals.

"**§ 19A-89. Severability.**

If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2008, and applies to inherently dangerous animals existing in this State on or after that date. The local animal control authority shall implement and administer the provisions of Article 6 of Chapter 19A of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1477
PROPOSED COMMITTEE SUBSTITUTE S1477-CSRIf-19 [v.4]

6/27/2007 1:27:38 PM

Short Title: Inherently Dangerous Animals. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT INHERENTLY DANGEROUS WILD ANIMALS POSE, TO PROTECT THE WELFARE OF INHERENTLY DANGEROUS ANIMALS, AND TO AUTHORIZE A FEE FOR REGISTERING INHERENTLY DANGEROUS WILD ANIMALS..

The General Assembly of North Carolina enacts:

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

"Article 7.

"Protection of Inherently Dangerous Wild Animals.

"**§ 19A-80. Definitions.**

(a) "Animal control authority" means the municipal or county animal control agency, or a county sheriff in an area that does not have an animal control agency.

(b) "Inherently dangerous wild animal" means any of the following types of animals, and any hybrids of these animals unless otherwise specified:

(1) Order Chiroptera – all bats.

(2) Order Carnivora:

a. Family Canidae – only wolves, not including wolf hybrids.

b. Family Felidae – only lions, tigers, cheetahs, jaguars, cougars, leopards, snow leopards, and clouded leopards.

c. Hyaenidae – all hyena species.

d. Family Ursidae – all bear species.

(3) Order Primates – all species including apes, Old and New World monkeys, and prosimians.

(4) Order Proboscidae – all elephant species.

(5) Order Perissodactyla – only rhinoceroses.

(6) Family Hippotamidae – all species of hippopotamus.

(7) Order Crocodilia -- all species.
(8) Family Helodermatidae – all species.

(c) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any employee, agent, or representative of the entity.

(d) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, an inherently dangerous wild animal.

(e) "Wildlife sanctuary" means a facility that cares for inherently dangerous wild animals and:

(1) Is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code;
(2) Does not commercially trade in animals listed as inherently dangerous wild animals, including the offspring, parts, and by-products of such animals;
(3) Does not propagate animals; and
(4) Does not allow direct contact between the public and animals.

"**§ 19A-81. Exemptions.**

(a) The provisions of this Article do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).
(2) Duly incorporated nonprofit animal protection organizations housing an inherently dangerous wild animal at the written request of the animal control authority.
(3) Federal or State wildlife enforcement officers acting under the scope of their authority.
(4) Animal control authorities or law enforcement agencies or officers acting under the authority of this act.
(5) Licensed veterinary hospitals or clinics.
(6) Any wildlife sanctuary as defined in G.S. 19A-80.
(7) A university, college, laboratory, or other research facility that holds a Class R registration pursuant to 9 Code of Federal Regulations Part 2 (January 1 2007 Edition).
(8) Circuses that are incorporated and hold a Class C license pursuant to 9 Code of Federal Regulations Part 2 (January 1 2007 Edition) that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any listed animal to the public as entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.

(9) A person who does not reside in this State and is traveling through this State with an inherently dangerous wild animal if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(10) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

(11) A "production company," as defined in G.S. 105-164.3, that uses an inherently dangerous wild animal in the production of original motion pictures or television images for theatrical, commercial, advertising, or educational purposes.

"**§ 19A-82. Keeping of inherently dangerous wild animals.**

(a) Except as otherwise provided in this Article, it is unlawful for a person to import into, possess, purchase, breed, or sell within this State, by any means, an inherently dangerous wild animal, including transactions conducted via the Internet.

(b) A person in legal possession of an inherently dangerous wild animal prior to January 1, 2008, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life, subject to the following conditions:

(1) The person shall maintain: (i) veterinary records; and (ii) acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to the effective date of this statute.

(2) The person shall present the records described in subdivision (1) of this subsection to an animal control or law enforcement authority upon request.

(3) The person shall be in compliance with the provisions set forth in G.S. 19A-83.

(c) A legally-possessed inherently dangerous wild animal shall not be replaced by a person who does not have an exemption as established in G.S. 19A-81.

"**§ 19A-83. Conditions under which grandfathered animals can be kept.**

A person who is in legal possession of an inherently dangerous wild animal prior to January 1, 2008, may keep possession of the animal for the remainder of the animal's life under the following conditions:

(1) Within 90 days of January 1, 2008, the possessor of an inherently dangerous wild animal shall register with the animal control authority. The authority may charge a fee to cover the costs of registration and record-keeping under this section. The registration shall include the person's name, address, telephone number, and a complete inventory of each inherently dangerous wild animal that the person possesses. The inventory shall include the following information: (i) the number and species of each regulated animal; (ii) the identification of the animal pursuant to subdivision (2) of this section; (iii) the exact location where each regulated animal is kept; and (iv) the age, sex, color, weight, and any other distinguishing marks of each regulated animal.

(2) Every inherently dangerous wild animal shall be uniquely identified using species appropriate, safe methods, and this identification shall be reported to the animal control authority.

(3) A possessor shall not breed an inherently dangerous wild animal.

(4) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon discovery that the animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a permitted animal.

(5) A possessor of an inherently dangerous wild animal shall notify local law enforcement and local fire departments what types of inherently dangerous wild animals the possessor has.

(6) A possessor shall develop, and keep at the location where the inherently dangerous wild animal is being kept, a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes. This plan shall also be filed with the local sheriff's department, and police department, if applicable.

(7) A possessor shall not trade an inherently dangerous wild animal or replace an inherently dangerous wild animal that was in his or her possession prior to January 1, 2008.

(8) A possessor of an inherently dangerous wild animal shall obtain and maintain a liability insurance policy with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property in an amount of not less than one million dollars ($1,000,000). The possessor shall present proof of possession and maintenance of liability insurance upon request to the animal control or law enforcement authority within 24 hours of the request.

(9) In addition to complying with the requirements set forth in this section, the possessor shall comply with any and all applicable federal, State, or local laws, rules, regulations, ordinances, permits, or other permissions. Failure to comply with any applicable law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Article.

"**§ 19A-84. Enforcement of Article.**

The animal control authority and its staff and agents, local law enforcement agents, county sheriffs, and federal or State wildlife enforcement officers may enforce the provisions of this Article.

"**§ 19A-85. Inspection.**

The possessor of an inherently dangerous wild animal shall, at all reasonable times, allow the animal control authority or other persons designated under G.S. 19A-84 to enter the premises where the animal is kept to ensure compliance with this Article.

"**§ 19A-86. Confiscation and disposition of inherently dangerous wild animals.**

(a) The animal control authority or other persons designated under G.S. 19A-84 may confiscate an inherently dangerous wild animal under the following conditions:

(1) The animal control authority or other persons designated under G.S. 19A-84 has probable cause to believe that the animal was acquired after January 1, 2008;

(2) The animal poses a public safety or health risk;

(3) The animal is in poor health and condition as a result of the owner's actions or inaction; or

(4) The animal is being held in contravention of this Article.

(b) An inherently dangerous wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or other persons designated under G.S. 19A-84 establishes that the possessor had possession of the animal prior to January 1, 2008, the return does not pose a public safety or health risk, and the possessor is in compliance with this act.

(c) The animal control authority or other persons designated under G.S. 19A-84 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation, and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(d) If an inherently dangerous wild animal that is confiscated under this section is not returned to the possessor, the animal control authority or other persons designated under G.S. 19A-84 may release the animal to a facility such as a sanctuary or a facility exempted pursuant to G.S. 19A-81. If the animal control authority or other person designated under G.S. 19A-84 is unable to relocate the animal within a reasonable period of time, it may euthanize the animal.

(e) If an inherently dangerous wild animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under G.S. 19A-84 may exercise judgment in attempting to recapture the animal or in killing the animal.

(f) This section applies to animal confiscations on or after January 1, 2008.

"**§ 19A-87. Penalties.**

A person who violates any provision of this Article is liable for a civil penalty of not less than two hundred dollars ($200.00) and not more than two thousand dollars ($2,000) for each animal with respect to which there is a violation and for each day the violation continues.

"**§ 19A-88. Severability.**

If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2008, and applies to inherently dangerous wild animals existing in this State on or after that date.

SENATE BILL 1477:
Inherently Dangerous Animals

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 27, 2007
Introduced by:	Sen. Jones	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S1477-CSRI		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1477 would make it unlawful for a person to import into, possess, purchase, breed, or sell within this State, an inherently dangerous wild animal, except in certain circumstances. A person violating the provisions of the PCS would be liable for a civil penalty of not less than $200.00 and not more than $2,000 for each animal with respect to which there is a violation and for each day the violation continues. The PCS also authorizes animal control authorities and other law enforcement personnel to confiscate an inherently dangerous wild animal kept in contravention of the provisions of the PCS.***

The provisions of the PCS would become effective January 1, 2008, and would apply to inherently dangerous wild animals existing in this State on or after that date.

[As introduced, this bill was identical to H1614, as introduced by Rep. Jones, which is currently in House Environment and Natural Resources .]

BACKGROUND: Section 32 of S.L. 2006-248 directed the Department of Environment and Natural Resources, in consultation with the North Carolina Zoological Park and the Wildlife Resources Commission, to study "the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of best providing that protection to the public while also protecting the welfare of inherently dangerous animals." The study committee met four times in 2006 -2007 and submitted a report of their recommendations to the General Assembly in May 2007.[1]

BILL ANALYSIS: The PCS would create a new Article 7 in Chapter 19A of the General Statutes that would –

- Make it unlawful for a person to import into, possess, purchase, breed, or sell within this State, an inherently dangerous wild animal, except in certain circumstances. The PCS includes a list of animals to be classified as inherently dangerous wild animals.
    - Exemptions to the prohibition include: Institutions accredited by the American Zoo and Aquarium Association; certain nonprofit animal protection organizations housing an inherently dangerous wild animal at the written request of the animal control authority; federal or State wildlife enforcement officers; animal control or law enforcement agencies or officers; licensed veterinary hospitals or clinics. wildlife sanctuaries; universities, colleges, laboratories, or other research facilities licensed under federal law; circuses licensed under federal law that are temporarily in the State, a non-resident of the State in the State with an inherently dangerous wild animal for not more than 72 hours; indigenous species regulated by the Wildlife Resources Commission; production companies that use inherently dangerous wild animals in the production of original motion pictures or television images for theatrical, commercial, advertising, or educational purposes.

[1] To be distributed with bill summary.

- Grandfathered possession of inherently dangerous wild animals, under certain circumstances: A person in legal possession of an inherently dangerous wild animal prior to January 1, 2008 may keep possession of the animal for the remainder of the animal's life, subject to the following conditions: (1) maintenance of certain records to be presented to animal control or law enforcement authorities upon request; (2) timely registration of the animal with the animal control authority; (3) unique identification of the animal using species appropriate, safe methods, which must be reported to the animal control authority; (4) the animal may not be bred; (5) immediate notification of animal control or law enforcement authorities upon discovery that the animal has escaped; (6) development and maintenance of a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes; (7) the animal must not be traded or replaced; (8) procurement and maintenance of a liability insurance policy that covers claims for injury or damage to persons or property in an amount of not less than $1,000,000; (9) compliance with any applicable federal, State, or local laws, rules, regulations, ordinances, permits, or other permissions.

- Confiscation of inherently dangerous wild animal by authorities: An animal control or law enforcement authority may confiscate an animal if: (1) it has probable cause to believe that the animal was acquired after January 1, 2008; (2) the animal poses a public safety or health risk; (3) the animal is in poor health and condition as a result of the owner's actions or inaction; o (4) the animal is being held in contravention of the provisions of the PCS.

  This section includes procedures for notice of the confiscation; return of the animal based on certain findings, and if not returned then procedures for placement or euthanasia; and discretion of authorities to act in response to release or escape of an inherently dangerous wild animal.

- Penalties: A person violating the provisions of the PCS would be liable for a civil penalty of not less than $200.00 and not more than $2,000 for each animal with respect to which there is a violation and for each day the violation continues.

EFFECTIVE DATE: The provisions of the PCS would become effective January 1, 2008, and would apply to inherently dangerous wild animals existing in this State on or after that date.

S1477e1-SMRI-CSRI

Inherently Dangerous Exotic Animals in North Carolina

Recommendations of the Study Committee

May 2007

Study Committee

Chair: Dr. David M. Jones, North Carolina Zoological Park

North Carolina Zoological Park	Lorraine Smith
North Carolina Wildlife Resources Commission	Joan Troy
North Carolina Wildlife Resources Commission	Daron Barnes
North Carolina Department of Agriculture	Dr. Mary Ann McBride
North Carolina Department of Agriculture	Dr. Tom Ray
North Carolina Department of Health and Human Services	Dr. Carl Williams
North Carolina State Animal Response Team	Dr. Kelli Ferris
North Carolina Animal Rabies Control Association	Reggie Horton
North Carolina Animal Rabies Control Association	Brenda Miller
North Carolina Veterinary Medical Association	Dr. Dan Johnson
North Carolina Sheriff's Association	Dane Mastin
North Carolina Partners for Amphibian and Reptile Conservation	David Davenport
North Carolina Association of Reptile Keepers	Andrew Wyatt
United States Fish and Wildlife Service	Andrew Aloise
United States Fish and Wildlife Service	David Rabon
United States Department of Agriculture	Dr. Miava Binkley
Animal Protection Institute	Nicole Paquette
Carolina Animal Action	Leslie Armstrong
North Carolina Task Force on Animal Fighting	John Sauls
North Carolina Exotic Animal Keepers Association	Sherry Tregembo
North Carolina Exotic Animal Keepers Association	Mindy Stinner

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Attachments

1. Animal Protection Institute Submittals
2. N.C. Association of Reptile Keepers Submittals
3. N.C. Responsible Animal Owners Association Submittals
4. N.C. Exotic Animal Keepers Association Submittals
5. The Conservator's Center Submittals
6. N.C. Association of Zoos and Sanctuaries Submittals

Executive Summary

With an affluent economy, the United States can be distinguished as the largest consumer of wildlife and wildlife products in the world. The Internet, local clubs and national organizations link individuals interested in unusual or exotic animals, putting exotic animals within reach of the average citizen. Animals from monkeys to king cobras and cougars are easily purchased with little restriction, particularly in states like North Carolina that have no statewide restrictions on owning the animals.

This abundance of available animals coupled with the ease of moving animals through commerce has resulted in unusual situations that could not have occurred in a natural setting. A recent example is the 2003 multi-state outbreak of monkey-pox in prairie dogs exposed to Gambian pouched rats at an Illinois animal dealer's facility. Disease transmission between the two species resulted in the serious illness of several individuals who purchased the prairie dogs as pets. In response, the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA) issued a joint Emergency Rule prohibiting the trade in prairie dogs. The CDC rule remains in place at this time. In addition to spreading disease, exotic animals present the risk of attack. Examples of hazards inherent to interaction with exotic animals involve animal attacks on humans including a chimpanzee attack in California that left a man with potentially life threatening injuries and a tiger attack in Minnesota that left a young boy quadriplegic.

Laws regulating the private ownership of exotic animals were relatively few in number as recently as ten years ago. However, now the number and variety has increased, often complaint driven when an exotic pet is moved into a neighborhood creating public safety concerns among neighbors. Exotic animals as private pets often attract media attention and various news agencies have covered human interest stories about people with unusual pets or stories about illness and injuries resulting from contact with exotic animals. Now the majority of states regulate exotic animal ownership (Tables 3, 4, 5) and all the states that have acted in recent years have banned the practice altogether for certain animals.

Because most states now regulate private ownership of exotic animals, those states which do not regulate exotic animal ownership, including North Carolina, will see immigration of people hoping to avoid regulation.

Background

During December 2003, ten-year-old Clayton Eller, nicknamed C.J. was shoveling snow near the tiger cage in his aunt and uncle's backyard. C.J. had grown up around the tiger and had not learned to be especially cautious or fearful around the animal. That day, the tiger reached out and dragged him under a gap in the caging. Hearing his screams, the uncle got a rifle and killed the tiger. Tragically, C.J. died before reaching the hospital. Prior to this fatal attack, Sheriff's Deputies had responded to neighbors' complaints about the tiger. However, they were unable to take action in the absence of county or state laws specifically regulating dangerous exotic animals. Appendix 1.

Less than two months later a teenage girl entered a cage to photograph her father's pet tigers in Surry County. She was injured by one of the tigers. Her father shot two of the four tigers on the property later that day. Surry County officials learned there were no state laws prohibiting ownership of tigers as pets.

Both Wilkes and Surry counties now prohibit possession of dangerous animals as pets. (Table 2)

Currently, 27 states prohibit private possession of certain exotic animals. Nine states have passed these regulations since 2000. (Table 3) Thirteen states regulate possession of certain exotic animals through permit and/or licensing requirements. (Table 4) Of the 10 states that do not currently

prohibit possession or regulate through permitting, six -- including North Carolina -- introduced a regulatory bill during the 2007 legislative session. The other states are Iowa, Missouri, West Virginia, Ohio and Washington. (Table 5) In addition, two states with permit requirements introduced bills to further prohibit the keeping of exotic animals as pets (Indiana, Oregon). The Iowa and Washington bills have been passed. The Governor of Washington has signed that state's bill bringing the number of states not regulating down to 10. The Iowa bill awaits signature of the Governor.

In North Carolina, at least 26 counties and 11 municipalities currently prohibit or regulate private possession of specific exotic animals. In several situations local ordinances were developed in response to citizen complaints about dangerous animals nearby or following serious injuries to a person including Montgomery, Carteret, Davidson, Wilkes, and Surry. The result is a mosaic of widely varied rules around the state. (Tables 1, 2)

In response to an increasing number of calls from local authorities seeking assistance with exotic animal concerns, officials from the North Carolina Zoological Park contacted Sen. John Garwood, Wilkes County, during fall 2005 and asked if he would consider introducing legislation to regulate exotic animals. Draft language similar to bills introduced in other states was shared with Sen. Garwood's office. Bill S 1032 was introduced, assigned to the Senate Judiciary II Committee and subsequently moved to the Senate for a vote with the support of Judiciary II. Appendix 2.

Many exotic animal owners, hobbyists, animal dealers, and breeders responded with strong opposition to the proposed legislation expressing concern that people could potentially lose their animal based businesses and that jobs associated with those businesses might be lost. Concerns about adverse impact on state tax revenues were also voiced. In response to citizen concerns, Senator Garwood reconsidered the bill text and requested revision as a Study Bill. The Study Bill passed the Senate with a 46-0-4 vote during the 2005 session and successfully passed the House in the 2006 omnibus bill. (Appendix 3) The Study Bill directed the Department of Environment and Natural Resources (DENR) represented by the North Carolina Zoological Park (NCZP) in partnership with the North Carolina Wildlife Resources Commission (WRC) to lead a study to determine need, if any, for exotic animal regulations in the state. This report reflects the deliberations and findings of that Committee.

Committee Structure and Meeting Process

When the original bill became a study bill, Senator Garwood's office sought input from DENR, private individuals and other agencies on composition of the Committee. The study bill text guided formation of the Committee that worked on the tasks identified in the bill.

Representatives from agencies listed in the bill are provided below.

1. North Carolina Zoological Park
   - Dr. David Jones, Committee Chair
   - Lorraine Smith*
2. North Carolina Wildlife Resources Commission
   - Joan Troy*
   - Daron Barnes
3. The Department of Agriculture and Consumer Services
   - Dr. Mary Ann McBride*
   - Dr. Tom Ray
4. The Division of Public Health of the Department of Health and Human Services
   - Dr. Carl Williams*
5. The North Carolina State University College of Veterinary Medicine
   - Dr. Kelli Ferris*
6. The State Animal Response Team
   - Dr. Kelli Ferris

7. Local Law Enforcement Officials
    Dane Mastin*
8. Local Animal Control Officials
    Reggie Horton*
    Brenda Miller
9. Wild Animal Breeder
    Vacancy
10. Exotic Pet Hobbyist
    Andrew Wyatt*
11. Commercial Pet Retailers
    Vacancy
12. Small Zoo Owners
    Sherry Tregembo*
    Mindy Stinner
13. Humane Organizations
    Leslie Armstrong*
14. Any other entities or groups whose interests may be affected by proposed regulations.
    i. North Carolina Veterinary Medical Association (NCVMA)
        Dr. Dan Johnson*
    ii. North Carolina Partners for Amphibian and Reptile Conservation (NCPARC)
        David Davenport*
    iii. United States Fish and Wildlife Service (USFWS)
        Andrew Aloise*
        David Rabon
    iv. United States Department of Agriculture (USDA)
        Dr. Miava Binkley*
    v. Animal Protection Institute (API)
        Nicole Paquette*
    vi. North Carolina Task Force on Animal Fighting (NCTFAF)
        John Sauls*

*voting member of the Committee

During the process of identifying committee participants, we established a selection criterion that each committee member must represent an umbrella group. The purpose of this requirement was to provide representation for as many people as possible while avoiding individual requests for committee seats with the purpose of pursuing individual and personal concerns.

Re. 9. Wild Animal Breeder. Two animal breeders contacted Senator Garwood's office following introduction of the original bill, S1032, and expressed interest in the process. Both breeders were invited to serve on the Study Committee. Both declined citing time limitations. However, one worked closely with the umbrella organization for their group and provided the Committee with information as well as ensuring representatives were present at the public hearing. (The International Cat Association (TICA))

Re. 11. Commercial pet retailer. Commercial pet stores do not typically play a role in the trade of dangerous exotic animals. We were not familiar with pet stores within NC that sell primates or exotic cats, for example. Exotic animals are typically purchased from dealers, breeders, classified ads in monthly magazines for exotic pet owners, auctions, or over the Internet. We are not familiar with an umbrella organization for commercial exotic pet retailers.

Re. 12. Small zoo owner. To our knowledge, no small zoo representative seeking a role in the process contacted Senator Garwood's office. At the time the Committee was created, there was no umbrella organization to represent small private zoos in North Carolina.

During the review process for Committee representation, information gaps in constituency representation on the Committee were identified. Groups whose participation could advance the deliberations of the Committee were identified and invited to place representatives on the committee. Those groups are listed below.

1. The American Veterinary Medical Association (AVMA) has published a policy statement on exotic pets because this issue impacts veterinarians in private practice. It is likely that veterinarians in North Carolina are familiar with the types of species most commonly kept as pets in the state. Statewide exotic animal regulations potentially impact veterinary practices in NC. For these reasons, the North Carolina Veterinary Medical Association (NCVMA) was contacted and asked to identify an individual to represent their NC membership.

2. The Partners for Amphibian and Reptile Conservation (PARC) is a respected national organization with a NC chapter. A representative of NCPARC was effectively able to represent issues surrounding reptiles and amphibians.

3. The United States Fish and Wildlife Service (USFWS) is charged with enforcement of federal laws relating to wildlife, wildlife trade, including, the Captive Wildlife Safety Act (CWSA) and the Lacey Act. The CWSA is currently the only federal law regulating exotic animals as pets. Given the potential impact on, and interest of, FWS in state regulations, this agency was invited to participate in the process.

4. The United States Department of Agriculture (USDA) is the federal agency charged with enforcement of the Animal Welfare Act (AWA) and is therefore responsible for inspecting USDA licensees in NC. A USDA license is required for public display of wild animals, operation of an exotic animal breeding facility, facilities which are not open to the public but do take animals out for public display, and exotic animal dealers; USDA registration is required for research facilities. Some private holders of exotic animals in NC have urged the Study Committee to include an exemption for USDA licensees. Because exemption for USDA licensees from statewide exotic animal regulations has the potential to impact that agency an invitation to participate in the process was extended.

5. The Animal Protection Institute (API) has assisted counties in NC, providing pro bono advice on exotic animal regulation. They have also worked with 17 other states on exotic animal regulations and brought a great deal of expertise and information to the group. Several state agencies and/or legislators have contacted API directly seeking advice and assistance with exotic animal regulations. The wealth of knowledge and experience with exotic animal regulations at all levels of government was valuable to the Study Committee.

6. The North Carolina Task Force on Animal Fighting, (NCTFAF), Legislative Committee, requested a seat on the Committee. The TFAF legislative group is reviewing animal related issues within the state and maintains an interest in and familiarity with the exotic animal trade. The composition of this group includes animal control officers, veterinarians and advisors familiar with North Carolina animal law.

7. North Carolina Exotic Animal Keepers Association. (NCEAKA) The EAKA requested a seat on the Committee during the 12/18/06 public hearing. The Committee was not aware of the group's existence prior to the meeting and asked them to name a representative. The EAKA subsequently requested a second non-voting seat on the Committee, which was provided.

8. Accredited Sanctuary. Representation from the sanctuary community to provide input from the perspective of rescue, regulatory issues and other needs was important to the process. However, there are no accredited sanctuaries in NC and we were aware of only one that met the definition of sanctuary as described in the Captive Wildlife Safety Act. One of the Committee members (Smith, NCZP) sits on the board of a sanctuary located in North Carolina, currently seeking accreditation from TAOS (The Association of Sanctuaries). A second Committee member (Paquette, API) works for an organization that operates an accredited sanctuary in Texas. It was felt that Smith and Paquette could represent sanctuary needs.

Bias and opinion

Critics both within and outside the Committee have charged that Committee members individually held inappropriate bias favoring sides or perspectives of this issue. It is worth observing that each agency and organization representative at the table held a bias supporting his or her agency mission, constituency views and personal interests. It would be both inappropriate and inaccurate to single out a representative as having a bias and fail to recognize that each individual serving on the Committee was charged with representation of a group that either supported or disagreed with regulation of dangerous exotic animals. Overall, we believe the mix of backgrounds, experience, views, and organizations was as balanced as one can expect to see in dealing with such a controversial subject.

Methods and Process

The Study Bill, S. 1032, directed DENR, NCZP and NCWRC to form a Study Committee (hereafter, the Committee) and instructed that Committee to review the potential need for exotic animal regulations in North Carolina and report those findings to the General Assembly. Specifically, the Committee was to address five points listed in the Study Bill.

Meeting minutes can be found in the appendices as follows:
Appendix 4. November 7, 2006
Appendix 5. November 28, 2006
Appendix 6. December 18, 2006
Appendix 7. January 23, 2007.

The Committee systematically considered each taxonomic group in multiple reviews. For purpose of the first and broadest review, Committee members loosely defined inherently dangerous animals as species having the potential to inflict physical injury or transmit disease to humans. Committee members were asked at the outset of the first meeting if any member of the Committee felt that no animals were potentially dangerous to humans. All present reached a consensus agreement that there are animal species dangerous to humans. Thus, the Committee worked from the premise that some animal species are dangerous to humans. This opened the discussion about each taxonomic group. At each stage of review, questions about existing regulations were raised, information gaps identified, and the species lists were further refined. The determination of risk relied heavily on the experience and expertise of Committee members. Supporting documentation is provided for each taxonomic group in the appendices to this document.

SECTION I

List of Types of Animals That Possess Inherently Dangerous Characteristics

(1) A list of the types of animals that possess such inherently dangerous characteristics that they should not be owned or possessed by persons who do not have special expertise or training, and a determination as to whether these animals should be grouped into classes for differential treatment based upon the nature and extent of the threat they pose to the public. This list should also include information about the nature of the dangers posed by each type of animal.

The Committee discussed the different reasons animals can be deemed 'inherently dangerous.' For purposes of the first taxonomic review, inherently dangerous species had to present a physical or microbiological risk to human health or safety. Species not native to North Carolina were defined as 'exotic.' Domestic species, species regulated as livestock and wildlife species currently regulated by the WRC were determined to be outside the scope of responsibility assigned to the Committee.

The review was divided into three sections: mammals; birds; and reptiles and amphibians. Insects were discussed and eliminated from the review process because exotic insects are regulated by federal and state agencies. Committee members discussed the advantages and disadvantages for including animals on the list of inherently dangerous exotic species citing examples from personal experiences, scientific literature, published reports, and news media. At the final Committee meeting, a recorded vote was conducted for each taxonomic group; two impartial recorders maintained a running total for votes and announced results immediately after each vote. A summary of votes is provided in Appendix 16.

After a series of discussions during multiple meetings, the Committee members gave verbal approval to the following definition of Inherently Dangerous Exotic Animal.

> *Definition of Inherently Dangerous Exotic Animal:*
> *An "Inherently Dangerous Exotic Animal" is any non-domesticated animal for which evidence can demonstrate that unprotected human contact with the species can result in a life threatening injury or disease to those who come in contact directly or indirectly.*

A list of types of animals for which some or all species were determined to be inherently dangerous follows. The list provided below is organized taxonomically for ease of use.

Class Mammalia - Mammals

Order Chiroptera - all bats

Emerging evidence suggests all species of bats pose potential disease risks.

Should all species of bats be included on the list of inherently dangerous animals?

Yes - 11 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Mastin/NCSA Horton, NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Paquette/API, Armstrong/CAA

No - 4 Johnson/NCVMA, Wyatt/NCARK, Binkley/USDA, Tregembo/NCEAKA

Abstain - 1 Aloise/USFWS

Committee member comments:
No comments.
References:

1. Bennett, M. Bats and Emerging Diseases, Editorial Review. Epidemiology and Infection. Volume 134, Issue 5, October 2006, pp 905-907 Cambridge University Press.
2. Chomel BB, Be lotto A, Muslin F-X. Wildlife, exotic pets, and emerging zoonosis. Emerging Infectious Disease. 2007 Jan.
3. Dobson, A. What Links Bats to Emerging Infectious Disease? Science. Volume 310, October 28, 2005. pp 628-629.
4. Halpin, Kim, Hyatt, A., Plowright, R., Epstein, J., Daszak, P., Field, H., Wang, L. Emerging Viruses: Coming in on a Wrinkled Wing and a Prayer. Clinical Infectious Diseases. 2007. 44: 711-717.
5. Leroy EM, et al. Fruit bats as reservoirs of Ebola virus. Nature 2005; 438: 575-576.

6. Stantic-Pavlinic, M. Public Health Concerns in Bat Rabies across Europe. Eurosurveillance Volume 10 Issues 10-12. October - December 2005.
7. Van Der Poel, Wim H. M., Lina, P., Kramps. Awareness of Emerging Zoonotic Viruses of Bats: A European Perspective. Vector Borne and Zoonotic Diseases. Journal of Public Health. Volume 6, Number 4, 2006. pp 315-324.

Recommendation:
Consider all species of the Order Chiroptera (bats) to be inherently dangerous.

Order Primates - prosimians, monkeys and apes

Primates are capable of inflicting bite wounds that can result in serious injury and/or transmission of disease. Zoonotic disease risks are a serious concern for those having direct contact with the animals or indirect contact with an animal through body fluids, waste, or other materials on caging or enrichment objects.

Should the following families of primates be considered inherently dangerous?

Families Cheirogaleidae, Lemuridae, Megaladapidae, Indridae, Daubentoniidae, Loridae, Galagonidae, Tarsiidae: (bushbabies, lemurs, lorises)

Yes - 9 Troy/NCWRC, Smith/NCZP, Williams/NCDHHS, Ferris/NCSART, Mastin/NCSA, Horton/NCARCA Sauls/NCTFAF, Paquette/API, Armstrong/CAA
No - 5 Johnson/NCVMA, Davenport/NCPARC, Wyatt/NCARK, Binkley/USDA, Tregembo/NCEAKA
Abstain - 2 McBride/NCSA, Aloise/USFWS

Families Callitrichidae and Cebidae: New World Monkeys; (marmosets, tamarins, capuchins, spider monkeys, howler monkeys, squirrel monkeys)

Yes - 9 Troy/NCWRC, Smith/NCZP, Williams/NCDHHS, Ferris/NCSART, Mastin/NCSA, Horton/NCARCA Sauls/NCTFAF, Paquette/API, Armstrong/CAA
No - 5 Johnson/NCVMA, Davenport/NCPARC, Wyatt/NCARK, Binkley/USDA, Tregembo/NCEAKA
Abstain - 2 McBride/NCDA, Aloise/USFWS

Family Cercopithecidae: Old World Monkeys; (macaques, baboons, guenons, mangabeys, langurs)

Yes - 11 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Mastin/NCSA Horton/NCARCA, Sauls/NCTFAF, Paquette/API, Armstrong/CAA, Brinkley/USDA
No - 4 Johnson/NCVMA, Davenport/NCPARC, Wyatt/NCARK, Tregembo/NCEAKA
Abstain - 1 Aloise/USFWS

Families Hylobatidae, Hominidae: Lesser Apes and Great Apes; (gibbons, siamangs, gorillas, chimpanzees and orangutans)

Yes - 12 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDPH, Ferris/NCSART, Mastin/NCSA Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Paquette/API, Armstrong/CAA, Binkley/USDA
No - 3 Johnson/NCVMA, Wyatt/NCARK, Tregembo/NCEAKA
Abstain - 1 Aloise/USFWS

Committee member comments:

1. Dr. Johnson, NCVMA; objection to the inclusion of guenons and mangabeys with macaques due to their smaller size and disease susceptibility.
   Note: guenons are a colorful group of African monkey species; the guenon group includes such species as vervet monkeys, Mona monkeys, Diana monkeys, DeBrazza's monkeys, blue monkeys and spot nosed monkeys.
2. Dr. Jones, Chairman; some guenons and mangabeys are the same size as macaques.

3. Dr. Johnson, NCVMA; based on size of the animal, objection to inclusion of gibbons as inherently dangerous.
4. Ms. Tregembo, NCEAKA; based on size of the animal, objection to inclusion of gibbons as inherently dangerous.
5. Dr. McBride, NCDA prohibits exhibition of primates at NCDA sanctioned events.
6. Dr. McBride, NCDA diagnostic labs do not accept primate samples for testing and do not accept primate carcasses for necropsy due to disease risk concerns.
7. Ms. Smith; zoonotic disease concerns have been identified for all four of the primate groups.
8. Ms. Smith; injuries to humans have been reported for all four of the primate groups.

References:

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2. Brooks, J.I., Merks, H.W., Fournier, J., Boneva, R.S., & Sandstrom, P.A., Characterization of blood-borne transmission of simian foamy virus. Transfusion_, 2007, _47_, 162-170.
3. Chomel BB, Belotto A, Meslin F-X. Wildlife, exotic pets, and emerging zoonoses. Emerging Infectious Disease. 2007 Jan. Available from http://www.cdc.gov/ncidod/EID/13/1/6.htm
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9. Eckstein, J. Dangers Associated with Keeping Primates as Pets. Missouri Department of Health and Senior Services. Health Advisory. October 6, 2006.
10. Fatal Cercopithecine herpesvirus 1 (B Virus) Infection Following a Mucocutaneous Exposure and Interim Recommendations for Worker Protection December 18, 1998 / 47(49);1073-6,1083; MMWR
11. Favoretto, S. R, de Mattos C. C., Morais, N. B., Alves Araujo, F. A., de Mattos, C.A. Rabies in marmosets (*Callithrix jacchus*), Ceará, Brazil. Emerging Infectious Diseases. 2001; 7:1062-5.
12. Greensill et al. Two Distinct Gamma-2 Herpes viruses in African Green Monkeys: a Second Gamma-2 Herpesvirus lineage among Old World Primates? The Journal of Virology. 74 (3): 1572
13. Heneine W, Schweizer M, Sandstrom P, Folks T. Human infection with foamy viruses. Current Topics Microbiological Immunology. 2003; 277:181-96.
14. Huemer, H., Larcher, C., Czedik-Eysenberg, T., Nowotny, N., Reiginger, M. Fatal Infection of a Pet Monkey with *Human herpes virus 1*. Emerging Infectious Diseases. 2002 June.
15. Lemur Attack Puts Focus on Exotic Pets. *The Advocate*, Louisiana. January 13, 2007.
16. Ostrowski, S., Leslie, M., Parrott, T., Abelt, S., Piercy, P. B-virus from Pet Macaque Monkeys: An Emerging Threat in the United States? Emerging Infectious Diseases. 1998 January.
17. Perspectives in Disease Prevention and Health Promotion Guidelines to Prevent Simian Immunodeficiency Virus Infection in Laboratory Workers and Animal Handlers. November 18, 1988 37(45);693-694,699-704
18. Publication of Guidelines for the Prevention and Treatment of B Virus Infections in Exposed Persons. MMWR. February 10, 1995 / 44(05);96-97

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20. Retrospective analysis of an outbreak of B virus infection in a colony of DeBrazza's monkeys (Cercopithecus neglectus). Lab Animal. 2004 Oct; 38(4):432-8.
21. Switzer WM, Bhullar V, Shanmugam V, Cong ME, Parekh B, Lerche NW, Yee JL, Ely JJ, Boneva R, Chapman LE, Folks TM, Heneine W. Frequent simian foamy virus infection in persons occupationally exposed to nonhuman primates. Journal of Virology. 2004 Mar; 78(6):2780-9.

Recommendation:
Consider all species of the Order Primates (lemurs, monkeys and apes) to be inherently dangerous animals.

Order Carnivora - wild dogs, wolves, cats and relatives

Should the following families of carnivores be considered inherently dangerous?

Family Canidae - wolves, dogs and their relatives

Should all wolves (*Canis lupus* 100%), excluding wolf-dog hybrids, be considered inherently dangerous?

Yes - 15 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA, Binkley/USDA, Tregembo/NCEAKA

No - 0

Abstain - 1 Aloise/USFWS

Should wolf- dog hybrids be considered inherently dangerous?

Yes - 9 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Mastin/NCSA, Horton/NCARCA Sauls/NCTFAF, Paquette/API, Armstrong/CAA

No - 5 Johnson/NCVMA, Davenport/NCPARC, Wyatt/NCARK, Binkley/USDA, Tregembo/NCEAKA

Abstain - 2 Ferris/NCSART, Aloise/USFWS

Committee member comments:

1. Dr. Ferris, SART, abstained, needs hybrid to be more clearly defined
2. Dr. McBride, NCDA, concurs, needs hybrid to be more clearly defined
3. J. Sauls, NC TFAF, should be limited to F1's
4. J. Troy, WRC, concurs, should be limited to F1's
5. D. Davenport, NC PARC, concurs, should be limited to F1's
6. Dr. Binkley, USDA recognizes wolf hybrids as dogs under the Animal Welfare Act; therefore she must also take that position.

References:

1. United States District Court. Michigan Wolf dog Association, Plaintiff, v. St. Claire County, Defendant.
2. Willems, R.A. The wolf-dog hybrid: An overview of a controversial animal. Animal Welfare Information Center Newsletter, Winter 1994/1995, Vol. 5 No. 4

Recommendation: Consider wolves, *Canis lupus*, to be inherently dangerous.
Recommendation: Seek additional information on wolf-dog hybrids. May consider regulation for F1 generation only.

Family Felidae - cats including only lion, tiger, cheetah, jaguar, cougar, leopard, snow leopard, clouded leopard and hybrids thereof. This list follows the federal Captive Wildlife Safety Act.

Should the large cats, regulated by the Captive Wildlife Safety Act, be considered inherently dangerous?

Yes - 16 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA, Binkley/USDA, Aloise/USFWS, Tregembo/NCEAKA

No - 0

Abstain - 0

Committee member comments:

1. Ms. Stinner questioned inclusion of the snow leopard and clouded leopard on the CWSA list.
2. Mr. Aloise confirmed both species will be regulated by the CWSA.

References:

1. Owners say cougar's attack was play. *St. Petersburg Times*. October 27, 1999.
2. Big Cats Kept as Pets across U.S., Despite Risk. *National Geographic Ultimate Explorer*. October 9, 2003.
3. Minn. Boy Left Quadriplegic by Lion, Tiger. *The Associated Press*. Tuesday, June 28, 2005
4. Udall couple mourns loss of grandchild mauled by a tiger. *The Ark City Traveler*, Kansas. August 22, 2005.
5. Family, friends of tiger victim plead for animal restrictions. Harris News Service March 15, 2006.
6. Trainer at S.F. Zoo Attacked by Tiger. *KCBS Radio*. December 22, 2006.
7. USDA Information Sheet on Declawing and Tooth Removal, August 2006.

Recommendation:
Consider lions, tigers, cheetahs, jaguars, cougars, leopards, snow leopards, clouded leopards and hybrids thereof to be inherently dangerous animals.

Family Hyaenidae - hyenas

Should hyenas be considered inherently dangerous?

Yes - 15 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA, Binkley/USDA, Tregembo/NCEAKA

No - 0

Abstain - 1 Aloise/USFWS

Committee member comments:
No comments.

Recommendation:
Consider all species of hyena to be inherently dangerous animals.

Family Ursidae: bears

Should bears be considered inherently dangerous?

Yes - 15 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA, Binkley/USDA, Tregembo/NCEAKA

No - 0

Abstain - 1 Aloise/USFWS

Committee member comments:
No comments.

References:

1. USDA Information Sheet on Declawing and Tooth Removal, August 2006.
2. 500-Pound Bear Attacks Ohio Woman. *(KDKA)* May 23, 2006

Recommendation:
Consider all species of bear to be inherently dangerous animals.

Order Proboscidea - elephants

Family Elephantidae: African and Indian elephants

Should elephants be considered inherently dangerous?

Yes - 15 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA, Binkley/USDA, Tregembo/NCEAKA

No - 0

Abstain - 1 Aloise/USFWS

Committee member comments:
No comments.

References:

1. Michalak, K., Austin, c., Diesel, S., Bacon, M.J., Zimmerman, P., Maslow, J.N., Mycobacterium tuberculosis infection as a zoonotic disease: transmission between humans and elephants. Emerging Infectious Disease. 1998 Apr-Jun; 4(2):283-7.
2. Elephant attacks on humans rare, unexplained, unpredictable. *The Pittsburgh Post-Gazette.* November 19, 2002.
3. Elephant attacks, injures keeper at Miami zoo. *Reuters News Service.* December 17, 2002.
4. Woman attacked by elephant - *Pittsburgh Tribune-Review* August 27, 2005

Recommendation:
Consider all species of elephants to be inherently dangerous animals.

Order Perissodactyla - Odd toed ungulates

Rhinocerotidae (rhinoceros).

Should rhinos be considered inherently dangerous?

Yes - 15 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA, Binkley/USDA, Tregembo/NCEAKA

No - 0

Abstain - 1 Aloise/USFWS

Committee member comments:
No comments.

References:

1. Chomel BB, Belotto A, Meslin F-X. Wildlife, exotic pets, and emerging zoonoses. Emerging Infectious Disease. 2007 Jan.

Recommendation:
Consider all species of rhinoceros to be inherently dangerous animals.

Order Artiodactyla – pigs, antelope and cattle

Family Suidae: wild pigs including only
Babirusa, wart hog, giant forest hog, bush pig; warty pig, Sus sp.
Excluding S. scrofa, the domestic pig, wild boar, and feral pig.
Note: NC WRC rule for wild boar, feral pigs.

Should wild swine species be considered inherently dangerous?
Yes – 7 Troy/NCWRC, Smith/NCZP, Mastin/NCSA, Sauls/NCTFAF, Davenport/NCPARC, Paquette/API, Armstrong/CAA
No – 2 Wyatt/NCARK, Tregembo/NCEAKA
Abstain – 7 McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA, Horton/NCARCA, Binkley/USDA Aloise/USFWS

Committee Member Comments:
1. D. Barnes, NC WRC will regulate swine as Russian wild boar in some counties within NC; in all other counties, swine will be regulated as feral hogs.
2. Dr. McBride, NCDA, abstain due to insufficient knowledge of species and prevalence in NC. Williams, Ferris, Johnson, Horton, Binkley concur.

Recommendation:
No consensus to include these species on the list of inherently dangerous animals.

Family Hippotamidae: pygmy hippopotamus, common hippopotamus
Should hippos be considered inherently dangerous?
Yes – 15 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Mastin/NCSA Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API, Armstrong/CAA Binkley/USDA, Tregembo/NCEAKA
No – 0
Abstain – 1 Aloise/USFWS

Committee Member Comments:
No comments.

References:
1. Hippo Kills French Zoo Director. Associated Press Report, November 1, 1999

Recommendation:
Consider all species of hippopotamus to be inherently dangerous animals.

Family Bovidae: only wild cattle including gaur, banteng, kouprey, anoa, African or Cape buffalo
Should wild cattle species be considered inherently dangerous?
Yes – 9 Troy/NCWRC, Smith/NCZP, Ferris/MCSART, Johnson/NCVMA, Mastin/NCSA, Sauls/NCTFAF Davenport/NCPARC, Paquette/API, Armstrong/CAA
No – 1 Tregembo/NCEAKA
Abstain – 6 McBride/NCDA, Williams/NCDHHS, Horton/NCARCA, Wyatt/NCARK, Binkley/USDA, Aloise/USFWS

Committee member comments:

1. Dr. Jones. Domestic cattle are not included. They are not within the scope of this Committee.
2. Dr. McBride, NCDA, requests information on hybridization of wild/domestic cattle as well as regarding the prevalence of wild cattle in NC.
3. Dr. McBride, American bison are regulated under NCDA as livestock

Recommendation:
Consider wild cattle species to be inherently dangerous animals.

Class Aves - Birds

No bird species are recommended for inclusion on a list of inherently dangerous animals. The ratites (emu, rhea, ostrich and their relatives) are currently regulated as livestock by the NCDA.

Class Reptilia-Reptiles and Amphibians

Order Crocodilia -alligators, caimans and crocodiles.

Should alligators, caimans and crocodile be considered inherently dangerous animals?

Yes – 13 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API Armstrong/CAA

No - 0

Abstain -3 Binkley/USDA, Aloise/USFWS, Tregembo/NCEAKA

Committee Member Comments:
No comments.

References:

1. Free Pet a Hard Bargain. (2006, November 30). *The Pittsburgh Tribune-Review.*
2. Not-so-usual suspects. (2006, November 16). *The News-Record, Greensboro.*

Recommendation:
Consider all species of crocodilians to be inherently dangerous animals.

Order Squamata - snakes and lizards
Family Helodermatidae- Gila monster, beaded lizard

Should species of the *Helodermatidae* (venomous lizards) be considered inherently dangerous?

Yes – 13 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC, Wyatt/NCARK, Paquette/API, Armstrong/CAA

No – 1 Tregembo/NCEAKA

Abstain – 2 Binkley/USDA, Aloise/USFWS

Committee member comments:
No comments.

Recommendation:
Consider all venomous lizards of the Helodermatidae to be inherently dangerous animals.

Family Boidae (anacondas) and ***Family Pythonidae*** (pythons): List the green anaconda (Genus *Eunectes*) only and List species of python as follows:

Amethystine python	*Morelia amethestina*
African rock python	*Python sebae*
Burmese python	*Python molarus*
Reticulated python	*Python reticulates*

Three votes were taken to address concerns re placement of the Burmese python on the 'Big 5' list of constrictor snakes. Results provided below.

Option 1: List 'Big 5' constrictor snakes: green anaconda, four python species listed above

Yes – 11 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/ NCSART, Johnson/NCVMA Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Paquette/API, Armstrong/CAA

No – 3 Davenport/NCPARC, Wyatt/NCARK, Tregembo/NCEAKA

Abstain – 2 Binkley/USDA, Aloise/USFWS

Question: Should the Burmese python be listed as inherently dangerous?

Yes – 5 Troy/NCWRC, McBride/NCDA, Mastin/NCSA, Paquette/API, Armstrong/CAA

No – 8 Smith/NCZP, Williams/NCHHS, Ferris/NCSART, Johnson/NCVMA, Horton/NCARCA, Davenport/NCPARC, Wyatt/NCARK, Tregembo/NCEAKA

Abstain - 3 Sauls/NCTFAF, Binkley/USDA, Aloise/USFWS

Option 2: List the green anaconda, amethystine python, African rock python, and reticulated python

Yes - 8 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Ferris/NCSART, Johnson/NCVMA, Mastin/NCSA, Paquette/API, Armstrong/CAA

No - 3 Davenport/NCPARC, Wyatt/NCARK, Tregembo/NCEAKA

Abstain– 5 Williams/NCDHHS, Horton/NCARCA, Sauls/NCTFAF, Binkley/USDA, Aloise/USFWS

Committee Member Comments:
No comments.

Recommendation:
Consider the Green Anaconda, Amethystine python, African rock python and Reticulated python to be inherently dangerous animals.

Families Atractaspidiae, Colubridae, Elapidae, Hydrophiidae, Viperidae (Venomous snakes)
Note: Committee discussed listing venomous snakes by taxonomic family or as a group. Consensus decision was to list venomous snakes, not indigenous to NC, as a group.

Should venomous snakes not indigenous to NC be considered inherently dangerous?

Yes – 13 Troy/NCWRC, Smith/NCZP, McBride/NCDA, Williams/NCDHHS, Ferris/NCSART, Johnson/NCVM Mastin/NCSA, Horton/NCARCA, Sauls/NCTFAF, Davenport/NCPARC/ Wyatt/NCARK, Paquette/API Armstrong/CAA

No – 0

Abstain – 3 Binkley/USDA, Aloise/USFWS, Tregembo/NCEAKA

Committee member comments:
No comments.

References:

1. Boy Killed by Python in Centralia, IL (August 31, 1999). *Chicago Sun Times*
2. Man Killed by Pet Python, (December 23, 1999). *UPI Focus*

3. Man crashes car after snake attacks him. March 31, 2006, *Naples Daily News*
4. 14-foot Python attacks handler during show in Tarpon Springs. *WTSP-TV, Tampa Bay's 10 News.* December 30, 2006.
5. CDC Position Statement on Prevention of Salmonella Transmission from Reptiles to Humans.

Recommendation:
Consider venomous snakes, not native to North Carolina, to be inherently dangerous animals.

Summary: Species considered inherently dangerous.

- Bats, all species
- Primates (lemur, monkey, ape), all species
- Wolves, all species
- Hyaenas, all species
- Felids (cats), only species regulated by the Captive Wildlife Safety Act: lion, tiger, cheetah, jaguar, cougar, leopard, snow leopard, clouded leopard and hybrids thereof.
- Bears, all species
- Elephants, all species
- Rhinoceros, all species
- Hippopotamus, all species
- Exotic wild cattle, only gaur, banteng, kouprey, anoa, African or Cape buffalo
- Crocodilians (alligator, caiman, crocodile), all species
- Venomous lizards, only Gila monster and beaded lizard
- Constrictor snakes, only amethystine python, reticulated python, green anaconda and African rock python
- Venomous snakes, all species not indigenous to North Carolina.

Section II

(2) Suggested Means to Regulate Ownership of Inherently Dangerous Animals

(2) *A suggested means for regulating ownership of certain animals, including a means of enforcing any proposed restrictions on the ownership or possession of those animals. This portion of the report may include an evaluation of regulations in place in other jurisdictions that have proven to be effective in protecting the public from inherently dangerous animals.*

Regulatory options:

A. Prohibit private possession of animals defined as Inherently Dangerous Animals
B. Regulate private possession of animals defined as Inherently Dangerous Animals
C. Do nothing

The Committee reviewed regulations from other jurisdictions, including local, state and federal laws. See attached tables for summary of laws from other jurisdictions.

Table 1. Exotic Animal Regulations - North Carolina Municipalities
Table 2. Exotic Animal Regulations - North Carolina Counties
Table 3. States that prohibit keeping of certain exotic animals
Table 4. States requiring a permit to keep exotic animals

Table 5. States with no restrictions for possession of exotic animals
Table 6. General Statutes - North Carolina
Table 7. Federal Laws governing possession of, trade in or 'take' of wildlife

Committee member comments:

1. A. Aloise, USFWS, recommends the Committee include discussion on intrastate transport of inherently dangerous exotic animals in NC. In his experience, there is a tendency to have more problems during transport.

Who should oversee the proposed manner decided?

State Agency

1. Department of Environment and Natural Resources
2. NC Wildlife Resources Commission
3. NC Department of Agriculture
4. NC Division of Public Health

Other Agencies

1. Local animal control
2. Local health department
3. Local law enforcement agency

Each of the government agencies represented on the Committee was asked to draft a 2-3 sentence statement about regulating inherently dangerous animals within their agency, whether they should be regulated at all, if so, should this be done at the local or state level.

Statement Submitted by the **North Carolina Animal Rabies Control Association**

The NCARCA supports the regulation of animals as identified in the Inherently Dangerous Committee. The consensus preference favors State enforcement of any State guidelines or regulations, however, in lieu of State enforcement; State guidelines pertaining to inherently dangerous animals are certainly preferable to the absence of legal guidelines, as local agencies typically are the first responders to calls involving these types of species. The reality of local enforcement remains however, the effectiveness of response will vary depending on resources available to any local agency charged with animal-related duties.

Statement Submitted by the **North Carolina Department of Environment and Natural Resources**

DENR, through the North Carolina Aquariums, the North Carolina Zoological Park and the North Carolina Museum of Natural Sciences, has responsibility for, and expertise in, the biology and husbandry of exotic animals in captive settings that are connected with the respective programs and facilities of those divisions. However, this is a management and not a regulatory capacity. The private ownership and sales of dangerous exotic animals can place, and in many instances, has placed North Carolina residents at risk of illness and injury from contact with species identified in this report. The welfare of these animals is often compromised, as well. Therefore, this agency supports statewide regulations for inherently dangerous animals.

Statement Submitted by the **North Carolina Wildlife Resources Commission**

As an agency with expertise in wildlife behavior and disease, this Commission is aware of the striking differences between domesticated and wild animals, and the unfortunate circumstances that result when well-intentioned individuals seek to adapt wild animals to domestic situations. Neither people nor animals typically benefit from such arrangements.

As an agency with regulatory authority over indigenous species, this Commission is also cognizant of the time and cost that must be expended to propose, implement and enforce rules for responsible management (including possession) of certain species. Regulation requires bureaucracy, which requires funding.

This agency does not seek to change its current statutory responsibility for management of indigenous species to incorporate responsibility for non-indigenous species. Furthermore, funds available to this agency are provided chiefly through hunting and fishing activities, and could not appropriately be applied to the creation of a new bureaucracy to regulate possession of "inherently dangerous" animals.

Therefore, the North Carolina Wildlife Resources Commission concurs with the report submitted by this committee and recommends, consistent with this report, passage of a law banning the private ownership of inherently dangerous animals.

Statement Submitted by the **North Carolina Department of Agriculture and Consumer Services**

See Appendix 11.

NC Department of Health and Human Services, Division of Public Health
A recommendation as to whether persons owning or possessing animals covered by any proposed restrictions should be grandfathered in under a regulatory scheme and while Division of Public Health supports protecting citizens of NC from trauma, poisoning or envenomation, and zoonotic infections that may result from private ownership of inherently dangerous animals, it is not structured to directly fulfill any mission that regulates those animals. The NC DPH does not possess field officers or have enforcement capabilities that are possessed by other state and local agencies. The prevention of harm to NC citizens from these animals lies in the outdoor environment and DPH believes its role should be as a consultant to any process created by the legislature for mitigating the risk posed by inherently dangerous animals. Assuming there is a genuine desire from all NC counties to regulate these animals in some fashion then a state law that creates consistency at a basic level for all counties would be preferable. To meet that goal regulation at a state level would be required.

Section III

(3) **How to Address Inherently Dangerous Animals that are Indigenous Species**
(Keep the 3)A plan for addressing inherently dangerous animals that are indigenous species within the jurisdiction of the Wildlife Resources Commission under Article 22 of Chapter 113 of the General Statutes and a consideration as to whether any potential legislation should broadly address the keeping of any wildlife as pets, whether indigenous or not and whether inherently dangerous or not. This portion of the report should result from extensive consultation with the Wildlife Resources Commission.

Recommendation:
The NCWRC currently regulates inherently dangerous indigenous species. Study Committee recommends no change.

Section IV

The appropriate means of grandfathering those persons in, including consideration of whether certain animals are so threatening to the public safety that the grandfathering of untrained owners or possessors should not be allowed under any circumstances.

Should Inherently Dangerous Animals be grandfathered in under a Regulatory Scheme and the appropriate means to do this?

Options:

A. If the recommendation is a ban, existing animals currently being kept are to be grandfathered in under any proposed bill
B. If the recommendation is a ban, existing animals currently being kept are not to be grandfathered in under any proposed bill
C. If the recommendation is a regulation, a grandfather clause is not a factor

(2) Recommendation:
The Committee recommends that possession of currently held animals be grandfathered. Concerns for public safety under a ban with a grandfathering provision can be managed through regulation or establishment of specific conditions that must be met.

Recommended conditions that must be met to hold individual animals grandfathered under a proposed rule.

1. Proof of ownership. Documentation that animal was owned prior to regulation/ban.
2. Breeding restrictions.
3. Identification of individual animals using species appropriate/safe methods. Ex. microchipping
8. Compliance with existing federal, state and local statutes.
10. Recovery plan in event of animal escape.
13 Registration with local authority
14 Reporting requirement for escapes
15 Confiscation powers for local authorities if animal escapes
16 Illegal to trade, swap animals (gives law enforcement officers a tool for investigation)

Conditions that were reviewed and <u>not</u> included in the recommendations:

4. Restriction from public contact.
5. Liability insurance. Circumstances and amounts.
   Per M. Stinner, this type of insurance is not available.
6. Caging, housing, perimeter security requirements.
7. Adherence to specified care standards.
9. Public safety precautions.
11. Training requirements
12. Site visit from local animal control

2131, as amended, that are temporarily in this state, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not class C licensees, who present any listed animal to the public as part of a carnival or for any of the following purposes:

a. Exhibition.
b. Entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.

(5) List of entities that should be exempted from any proposed restrictions

A recommended list, as comprehensive as possible, of persons and entities that should be exempted from the proposed restrictions on ownership or possession of the animals covered by any proposed restrictions, such as zoos, veterinary hospitals, wildlife sanctuaries, research institutions, and the like

A. Institutions accredited by the American Zoo and Aquarium Association (AZA). The accreditation and a sample set of animal care standards for AZA facilities can be found in Appendix 15.
B. Duly incorporated nonprofit animal protection organizations housing an inherently dangerous animal at the written request of the animal control authority.
C. Federal or state wildlife enforcement officers acting under the scope of their authority.
D. Animal control or law enforcement agencies or officers acting under the authority of this act.
E. Licensed veterinary hospitals or clinics.
F. Any sanctuary as defined in the Captive Wildlife Safety Act. Must have 501 (c) 3 or 501 a status; no breeding of animals; does not sell or offer for sale animals, animal parts or animal products; does not permit direct contact between the public and animals; maintains high standards of animal care.
G. A research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.C.A. 2131, as amended. This includes but is not limited to universities, colleges, and laboratories holding a valid Class R license under the Animal Welfare Act.
H. Circuses, defined as incorporated, class C licensees under the Animal Welfare Act, 7 U.S.C.A.
I. A person who does not reside in this state and is traveling through this state with listed species if the transit time is not more than 96 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

Additional Exemptions Proposed

1. All identified inherently dangerous reptiles will be regulated as per North Carolina Partners in Amphibian and Reptile Conservation (NC PARC) permitting and licensing proposals. This exemption is to be valid only for animals that fall under the Class Reptilia provision of this article. Appendix 8.

2. NC Exotic Animal Keepers Association proposed animal care standards to support exotic animal facility exemption. Appendix 9.

Discussion: Other possible exemptions and types of activities using exotic animals

Proposal: Exempt USDA licensees

Committee member comments;

1. Dr. Binkley, USDA does not want to see a free for all situation where everyone with a pet can apply for a license.
2. Ms. Smith, purpose of USDA license is to ensure compliance with the AWA. Does not satisfy concerns for public safety as directed in the Study Bill.
3. Dr. Binkley suggested conditions for USDA exemption as follows:
   a. Must possess a valid USDA license.

b. The inherently dangerous animal must not be kept as a pet.
c. The licensee must be a bonified business.
d. The licensee must be in good standing with federal as well as state and local authorities.

Public contact with inherently dangerous species is not permitted

4. Committee discussion. USDA requires applicants for a license to be experienced. Dr. Binkley explained as follows: The individual seeking licensing must submit a written description of their experience for USDA to review. USDA officials review the document and make their decision.

Proposal: Exempt Photo Opportunities

USDA currently allows public photo opportunities with small cubs and does not specify a size limit for direct human/cub contact. Their recommended cut off is usually when the cubs are larger than 30-40 lbs.

Dr. Binkley commented that there is a concern about these photo opportunities and the resulting problem of surplus cubs once they become too large to handle in photo opportunity situations. The concern is that some individuals continue breeding their cats to produce cubs resulting in a growing number of large unwanted large cats.

Discussion point: Animal Welfare Considerations.

>Dr. Jones asked the Committee Members if animal welfare was compromised in this type of situation

>Ms. Smith stated this is the case; scientific publications on the subject of well-being are available for many species. Separation of mothers/infants results in stress that is well documented in primate species.

>Ms. Stinner disagreed, stating that removal of lion cubs from their mother at her facility for photo and contact opportunities is not detrimental to their welfare.

Dr. Jones posed a question: How do we reconcile the desire to display and handle young animals for photo opportunities and in other venues with the need to provide high quality care?

Question: Can species identified as 'inherently dangerous' be taken from their home cage for the purpose of exhibition? For example, fairs, festivals, other venues.

Yes - 9 No - 5 Abstain - 2

Committee Comment:
There are people who take animals out for education reasons, but there are drawbacks to this practice.

Exemptions for Umbrella Organizations

1. NCPARC

The North Carolina Partners for Amphibian and Reptile Conservation were represented on the Committee by Mr. David Davenport. The NCPARC animal husbandry and management recommendations can be found in Appendix 8.

The NCPARC members wish to set up an inspection program in partnership with the North Carolina Wildlife Resources Commission or other state agency.

2. NC EAKA

The North Carolina Exotic Animal Keepers Association was represented on the Committee by Ms. Sherry Tregrembo. The NCEAKA animal husbandry and management recommendations can be found in Appendix 9. They wish to propose an accreditation system for non-AZA accredited facilities within North Carolina.

The EAKA members do not wish to serve as inspectors for the EAKA accreditation system. Per Ms. Tregembo, the EAKA leadership prefers independent reviewers. There are details that need to be worked out as the EAKA had only been working on their system for 3 weeks when first presented at the January 23, 2007 Committee meeting.

Summary of Recommendations

I. List species of inherently dangerous exotic animals.

The Committee reviewed species representing many taxonomic groups of animals during this process. The final, formal vote was taken during the final Committee meeting, January 23, 2007. Although discussion and votes were done during earlier meetings, the final meeting included the largest number of voting members from the Committee. The list below reflects that vote. A summary of how each agency voted can be found in Appendix 16.

Exotic Animal Species recommended for consideration as Inherently Dangerous:

- Bats, all species
- Primates (lemur, monkey, ape), all species
- Wolves, all species
- Hyaenas, all species
- Felids (cats), only species regulated by the Captive Wildlife Safety Act: lion, tiger, cheetah, jaguar, cougar, leopard, snow leopard, clouded leopard and hybrids thereof.
- Bears, all species
- Elephants, all species
- Rhinoceros, all species
- Hippopotamus, all species
- Exotic wild cattle, only gaur, banteng, kouprey, anoa, African or Cape buffalo
- Crocodilians (alligator, caiman, crocodile), all species
- Venomous lizards, only Gila monster and beaded lizard
- Constrictor snakes, only amethystine python, reticulated python, green anaconda and African rock python
- Venomous snakes, all species not indigenous to North Carolina.

Exotic Animal Species reviewed and not recommended for consideration as Inherently Dangerous

- Exotic wild swine, all species
- Giraffe, okapi
- Camel, guanaco, alpaca
- Exotic wild equines, including zebra
- Birds, all species

Exotic Animal Species requiring further discussion

- Wolf dog hybrids, several Committee members felt F1 generation individuals should be regulated. However, it is difficult to identify wolf dog hybrids on basis of visual inspection only.

II. Regulations from Other Jurisdictions

See tables 1 - 7.

III. Inherently Dangerous Species Indigenous to North Carolina

The NCWRC currently regulates inherently dangerous indigenous species. The Study Committee recommends no change.

IV. Considerations for Grandfathering Species

The Committee recommends that possession of currently held animals be grandfathered. Concerns for public safety under a ban with a grandfathering provision can be managed through regulation or establishment of specific conditions that must be met.

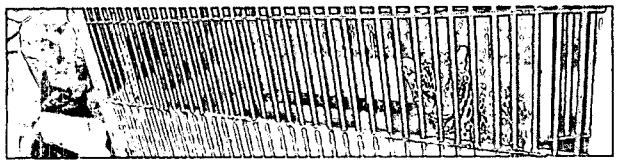
- Proof of ownership. Documentation that animal was owned prior to regulation/ban.
- Breeding restrictions.

- Identification of individual animals using species appropriate/safe methods. For example microchip
- Compliance with existing federal, state and local statutes.
- Recovery plan in event of animal escape.
- Registration with local authority
- Reporting requirement for escapes
- Confiscation powers for local authorities if animal escapes
- Illegal to trade, swap animals (this provides law enforcement officers a tool for investigation)

V. Entities to be Exempted from the Proposed Regulations

Two additional exemptions were proposed by related organizations. However, the Committee did not have sufficient information regarding those exemptions to make a recommendation in this report.

- Institutions accredited by the American Zoo and Aquarium Association (AZA).
- Duly incorporated nonprofit animal protection organizations housing an inherently dangerous animal at the written request of the animal control authority.
- Federal or state wildlife enforcement officers acting under the scope of their authority.
- Animal control or law enforcement agencies or officers acting under the authority of this act.
- Licensed veterinary hospitals or clinics.
- Any sanctuary as defined in the Captive Wildlife Safety Act. Must have 501 (c) 3 or 501 a status; no breeding of animals; does not sell or offer for sale animals, animal parts or animal products; does not permit direct contact between the public and animals; maintains high standards of animal care.
- A research facility holding a Class R license under the Animal Welfare Act, 7 U.S.C.A. 2131, as amended for the species of animals they are licensed for. This includes but is not limited to universities, colleges, and laboratories holding a valid Class R license under the Animal Welfare Act.
- A person who does not reside in this state and is traveling through this state with listed species if the transit time is not more than 96 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.
- Circuses, defined as incorporated, class C licensees under the Animal Welfare Act, 7 U.S.C.A. 2131, as amended, that are temporarily in this state, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not class C licensees, who present any listed animal to the public as part of a carnival or for any of the following purposes:
    a. Exhibition.
    b. Entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.



Exotic Animals in Private Hands in North Carolina

API's investigation into the private ownership of exotic animals and roadside zoos and menageries in North Carolina revealed the appalling conditions in which some of these animals were kept as well the dangers that such animals present to public safety. Key findings include:

- **Poor Conditions:** Animals kept in inadequate conditions; pens that were too small, which failed to allow animals to express normal species-specific behaviors.
- **Lack of Enrichment:** Pens that were barren or lacked appropriate structures and furnishings and did little, if anything, to stimulate the animals' natural behavior, resulting in stereotypical behavior.
- **Lack of Companionship:** Animals who were housed alone.
- **Cruel and Inappropriate Treatment:** Animals handled roughly and inappropriately; teeth and claws surgically removed; nonhuman primates often treated like human children, kept in diapers; animals left to roam inside houses.
- **Overbreeding:** The continual breeding of certain species to provide a constant supply of young animals for attractions and photo opportunities.
- **Dangerous Public Contact:** The offering of "close encounters" in which the public was allowed to have direct contact with dangerous animals; ineffective barriers to protect the public from having direct contact with the animals.
- **Child Endangerment:** Children placed at risk of attacks and injuries from dangerous exotic animals.
- **Reckless Behavior:** Owners placed the public and themselves at risk through irresponsible behavior.
- **Animal Attacks:** Reports of attacks and injuries inflicted by exotic animals on owners and others.

North Carolina currently has no state laws regulating the private ownership of exotic animals.

Examples of Poor Conditions / Animal Mistreatment

- **Charlotte Metro Zoo:** Animals housed here included a number of big cats such as tigers, lions, and leopards; bears; and various species of primates, including a chimpanzee, baboons, and macaques. Many of the animals were kept in inadequate conditions: pens were small, barren, and lacked meaningful enrichment. Some animals displayed stereotypical behavior, such as circling, pacing, and rocking. The facility had been cited by the USDA on a number of occasions for failing to provide minimal standards of care for its animals, including failure to provide environmental enrichment, failure to provide shelter, failure to erect a perimeter fence, inadequate feeding, and more.

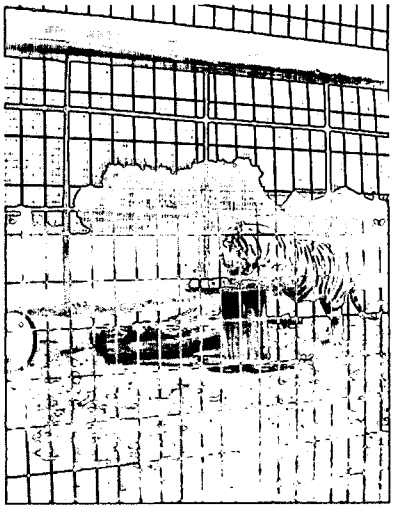


FIG. 1: *Animals were often kept in poor conditions that lacked appropriate structures and enrichment for the species. In a barren, muddy, and wet cage, there were no raised platforms to allow the cats off the ground. (Charlotte Metro Zoo, NC)*

FIG. 2: *Bears were kept in barren concrete pits with a visitors' "gallery" above so that people could look down and throw food at them. There was no shelter, forcing them to be on permanent "display." (Cherokee Bear Zoo, NC)*

FIG. 3: *These bears were kept in appalling conditions. The pens had concrete floors and were extremely small and barren. One pen had no shelter. (Santa's Land, NC)*

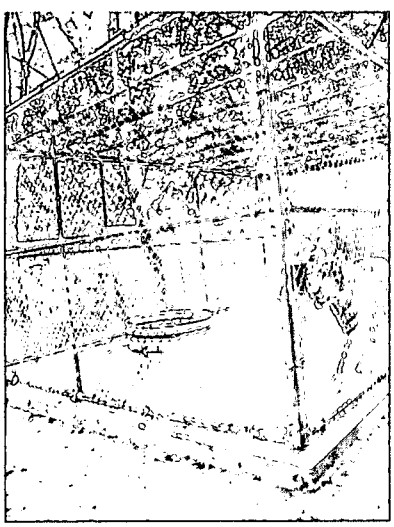


FIG. 4: *Animals are often confined to small and barren environments that fail to meet their physical and psychological needs. This tiger displayed marked stereotypical behavior, pacing inside his small, concrete prison. (Triangle Metro Zoo, NC)*

The large cats lived in different size enclosures and pens with either earthen or concrete floors. For many animals, there was little in the way of structures and meaningful enrichment. Some cats displayed stereotypical behavior, pacing inside their pens. On the day of API's visit, it was raining. One pen containing three tigers was very wet and muddy. There were no raised platforms that would allow the cats to be off the ground. *(See Fig. 1)*

One leopard was found on his own in a small metal trailer covered by a blue tarpaulin sheet. *(See Masthead photo)* Another leopard was kept in a very small, barren pen under the porch of an on-site private residence.

Some of the primates were housed in pairs, but others were kept singly, with no opportunity to socialize. Enrichment methods were not substantive and pens were not suitable for the species they housed. Some pens had concrete floors and lacked height and space. A number of the monkeys displayed stereotypical behavior such as pacing, rocking, circling, and repetitive jumping.

Some animals were handled roughly and treated aggressively by the facility's owner and his partner. The owner told API investigators that the best way to stop a monkey from biting was to gag her by shoving fingers down the animal's throat. He also smacked one tiger on the face after the tiger bit him. His partner roughly handled infant monkeys.

- **Cherokee Bear Zoo:** This facility contained a number of bears, primates, and tigers. The animals were housed in poor conditions and music blared constantly throughout the zoo.

  The bears were kept in concrete pits with a visitors' "gallery" above them so that people could look down and throw food at them. There were a number of these pits, all in a row, containing either two or four bears. The pits were made entirely of concrete. There were no shelters visible. The bears had no privacy, and were forced to be on display the whole time and were literally "performing" for their food. *(See Fig. 2)*

  The conditions for the primates and a tiger failed to meet the animals' physical and psychological needs. Most of the primates were kept in circular cages with concrete floors and a roof. These cages were small and barren. The baboons in particular suffered in such a confined space. The tiger pen was small, with a concrete floor; a depression in the ground was used as a water area. Otherwise, the pen was barren. There was no shelter available for the animal.

- **Santa's Land:** This theme park and petting zoo housed a number of animals, including bears and cougars. Many of the animals were kept in poor conditions, in small and barren pens. *(See Fig. 3)*

  Four adult black bears were kept in pairs in two extremely small, dark pens, with low roofs and concrete floors. The only structures in one of the pens were a small raised wooden platform and a shallow concrete container that appeared to be the bears' only source of water and was almost empty. There was no shelter.

  Two cougars were housed in a small, dark, concrete pen with a covered roof. There was no shelter, just a raised wooden platform. The only other structure in the pen was a concrete water bowl.

- **Triangle Metro Zoo:** Animals kept here included bears, big cats, and

primates. Many of the animal pens were inadequate: small and barren with a concrete or shiny artificial surface. The pens were clearly designed for appearance and ease of cleaning, not to meet the needs of the animals. They lacked enrichment, some only containing a water trough. *(See Fig. 4)*

Two bears were housed in a small closed-topped pen with an artificial floor. There was a depression in the surface for a water area. The only items in the pen were a small metal hut attached to one side, a log, and a metal bracket (possibly used to hold a bucket). A plastic tube allowed the public to feed the bears. Otherwise, the pen was empty.

Two lions were kept in a very small, barren pen with an artificial floor. There was a small brick building attached for a shelter. The only other item in the pen was a water trough. There were no structures or enrichment. A tiger, who displayed stereotypical behavior, was kept in a similarly small and barren pen nearby. *(See Fig. 4)*

Examples of Threats to Public Safety / Reckless Behavior / Child Endangerment

- **Charlotte Metro Zoo:** The owner of this facility behaved recklessly during API's investigators' visit and took risks with public safety. He performed tricks with tigers in front of visitors, sitting on one tiger's back and sticking his face into the mouth of another. On one occasion, an adult tiger on a leash was on display in a non-secured area. The owner put his arm, and then his head, into the tiger's mouth. He then walked the tiger, holding only the collar, back into his enclosure. *(See Fig. 5)*

Tigers, lions, and monkeys were bred on-site and used in photo shoots and taken to fairs. It appeared that some, if not all, of the tiger cubs and infant monkeys were removed prematurely from their mothers for commercial purposes. The animals were raised inside an on-site private residence. Despite acknowledging the potential dangers that tiger cubs and infant monkeys pose to the public, the owner appeared to regularly take these animals out to let visitors see them and for photo opportunities.

API investigators were invited into an on-site private residence to see the infant monkeys and tiger cubs who were kept in the house. All the animals had their teeth and claws. Incidents took place at the house while API investigators were present that posed a serious danger to a five-year-old girl living there. On one occasion, a tiger cub climbed onto the girl and grabbed her with his paws. Her mother had to push the cub away. The child climbed out of reach onto the back of the sofa. The child was nervous around the animals and at one point asked her mother not to let the tiger cub bite her if she got off the sofa. The tiger cub bit the mother's foot.

Underneath the porch of the house, an adult black leopard was kept in a small pen. From the porch, the child would be able to stick her hands through the wire directly into the pen and touch the leopard. *(See Fig. 6)*

The mother was irresponsible to allow this interaction. Not only was the child's safety at risk, but the animals themselves were at risk from the actions of the child. On one occasion, the child was pulling one of the monkeys around roughly on his leash and swinging him in the air, shouting and laughing while she did it. Her mother made no attempt to stop her.

- **Cherokee Bear Zoo:** A number of incidents took place during API's visit

FIG. 5: *The owner performed tricks with tigers in front of visitors such as putting his arm and then his head into this tiger's mouth, as seen here. (Charlotte Metro Zoo, NC)*

The Animal Welfare Act (AWA) requires that there be a sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

FIG. 6: *This child was at risk from a leopard who was kept in a cage under the porch of this house. (On-site Private Residence at Charlotte Metro Zoo, NC)*

FIG. 7: *Children were allowed to stick their hands through bars to touch these large tiger cubs. These cubs were also taken out for "photo ops" that included direct contact with the public. (Cherokee Bear Zoo, NC)*

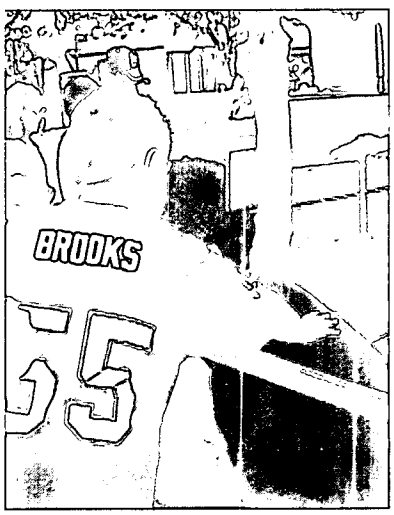


FIG. 8: *The public, including children, were openly encouraged to touch bears. One of the staff told visitors: "Our insurance company says no petting. However, if you decide you want to pet them, keep in mind we're not liable, okay. Now they will bite, but if you decide you want to pet them, I suggest you might want to pet them on the back, away from the head area." (Santa's Land, NC)*

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that raised concerns about the risks this zoo took with visitors' safety.

The zoo placed the public at risk by allowing direct contact with dangerous animals during photo sessions. Two five-month-old tiger cubs were used in these sessions. People were allowed to bottle-feed the tiger cubs while having their photograph taken. The cubs had been de-clawed in their front feet but still had their teeth and were capable of inflicting serious bites. The cubs were not put on leashes for the photos but were roughly handled by the collar. There was no safety area attached to the pen, allowing the cubs direct access into public areas if they escaped. Following one photo session, a staff member left a tiger cub unsupervised and unleashed outside of her pen.

In addition, a group of children was actually allowed to stick their hands through the bars of the tiger pen to touch the tiger cubs. The cubs started to jump up at the children, who became nervous; their parents called them away. *(See Fig. 7)*

- **Santa's Land:** This facility took risks with public safety by allowing zoo visitors, including children, to have direct contact with dangerous animals.

Two seven-month-old bear cubs were put on public display during feeding time. Adults and children gathered for the event, where there was only an ineffective safety barrier (a low single rail circling a platform). The gate to the bears' pen was opened and the cubs were allowed to run out unrestrained onto the platform directly in front of the public. The animals climbed two poles and a staff member held out a bottle of fruit punch for them to drink. It was only then that the bears were leashed. A staff member openly encouraged the public to touch the bears, even though they were told the animals could bite. When the bears climbed down from the poles, children reached out and started to stroke the bears. After a while the gate was opened and the bears were led back inside their pen. The gate was left open while the leashes were removed. *(See Fig. 8)*

API's Recommendations

Faced with the evidence uncovered by this investigation, and the rising tide of attacks and injuries nationwide, API is calling for four key steps to be taken as a matter of priority:

- North Carolina must act now to pass laws that ensure that the private ownership of exotic animals is prohibited.
- The breeding, selling, and display of exotic animals at roadside zoos and menageries must end.
- The public must be educated about the safety threats and animal welfare concerns associated with roadside zoos and exotic "pets," and be shown that wild animals do not belong in private hands.
- Where exotic animals cannot be transferred to a genuine sanctuary, existing owners must, at a minimum, increase the standard of care being provided to ensure the safety and well-being of the animals and the public.

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Incidents

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North Carolina Exotic Animal Incidents

The following is a partial list of attacks on humans and other incidents involving animals kept in private possession in the U.S. since 1995. Captive elephant and captive feline attacks on humans are responsible for hundreds of injuries, many resulting in death.

Date	Place	Incident
1/29/07	Nahunta, NC	A female Japanese snow monkey that had escaped her home in early December was finally caught on the Seymour Johnson Air Force Base grounds. It is still unclear what will happen to the monkey. *(Goldsboro New-Argus)*
11/16/06	Greensboro, NC	U.S. Marshalls and High Point police were called to a motel in Greensboro to serve a warrant on a suspect, Christopher Ezekiel, 30, of High Point. Inside the room at the Red Roof Inn, officers found a fish tank with a three-foot alligator and a three-foot caiman--a crocodile-like animal. It is illegal to possess an alligator in North Carolina. The caiman, an animal found in most pet stores, would normally be returned to the owner. The NC Wildlife Resources Commission will take possession of both animals because Ezekeil is being held at the Guilford County Jail in High Point. *(www.newsrecord.com)*
10/16/06	Fleetwood, NC	Woman bitten after crossing barrier fence and putting arm into cage to pet leopard at the New River Zoo; suffers severe cuts requiring surgery. The leopard was euthanized to test for rabies. Zoo subsequently closed temporarily, pending results of investigation into incident. *(www.journalnow.com – online partner of Winston-Salem Journal)*
7/18/06	Brevard, NC	A grown 3-foot-long caiman was found in the French Broad River. The caiman is suspected to be an abandoned "pet." (*Citizen-Times)*
5/29/06	Cumberland, County, NC	Two servals escaped/released from their enclosures. One has been found. (www.fayettevillenc.com)
11/16/05	Greensboro, NC	A serval escaped for the second time from his home (see incident 10/05). The serval was in the basement of a house when he pushed through a panel and escaped. *(Yes! Weekly)*
10/9/05	Greensboro, NC	A serval escaped from his home. *(News-Record)*

Date	Place	Incident
1/8/05	Cleveland and Gaston County, NC	Two tiger cubs found wandering along a highway on the Gaston and Cleveland County border. Both tigers were captured and are female and appear to be from the same litter. The tigers will be placed at Carnivore Preservation Trust. (*Shelby Star)*
1/9/04	Surry County, NC	A 14-year-old girl was mauled by her father's "pet" tiger while she was inside the cage taking pictures of the animal. Her father owned four tigers and after the incident all were shot. (*Winston-Salem Journal)*
12/15/03	Rockwell, NC	Samson, leopard or jaguar at Charlotte Metro Zoo, while being used in television commercial for Carolina Panthers bites zoo's owner. In separate incident, cobra used for Carolina Cobras football team commercial gets loose during filming. (*Salisbury Post*)
12/11/03	Millers Creek, NC	A 10-year old boy was mauled to death by his aunt's "pet" tiger. The tiger pulled the boy under a fence and into his cage. (Associated Press)
5/1/03	Darlington County, NC	A man was attacked by his water buffalo. After the attack the water buffalo was shot and killed. (*The Messenger)*
8/12/02	Haywood County, NC	A rattlesnake bit a man's leg after he brought the snake into his kitchen and force-fed the snake an egg. (*The Citizen-Times)*
12/1/01	Forsyth County, NC	A six-year old child may loose her leg due to an attack by two "pet" wolves or wolf hybrids. *(WXII12.com)*
10/9/00	Greenville, NC	Woman finds a bag on the side of the road, which contained a boa constrictor. The snake was probably an abandoned "pet". (WLOS-TV, ABC)
9/30/00	Rowan County, NC	A black leopard club and a tiger cub were on the loose after escaping from their cages when the truck they were being carried in was involved in an accident. (WBTV-TV, CBS)
4/2/98	Charlotte, NC	Lion at Charlotte Metro Zoo attacks and seriously injures worker cleaning animal's cage. Worker suffers puncture wounds to both legs and back of head. (*Greensboro News & Record*)
11/2/95	Apex, NC	A "pet" Bengal tiger mauls and critically injures 3-year-old boy while father walks animal on leash. The boy required 18 hours of surgery. One side of the boy's head was partially crushed. The boy's father shot the tiger and was convicted of misdemeanor child abuse as a result of the incident. (*The Charlotte Observer)*

State Laws

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LAWS RELATING TO PRIVATE POSSESSION OF EXOTIC ANIMALS OF NORTH CAROLINA AND SURROUNDING STATES

State	Type of Regulation	Summary of Law	Citation
Florida	Ban & License	It is unlawful for a person to possess any Class I Wildlife as a pet unless the animal was in possession prior to August 1, 1980. Class I Wildlife which are banned include: 1. Chimpanzees (genus Pan) 2. Gorillas (genus Gorilla) 3. Gibbons (genus Hylobates) 4. Drills and mandrills (genus Mandrillus) 5. Orangutans (genus Pongo) 6. Baboons (genus Papaio) 7. Siamangs (genus Symphalangus) 8. Gelada baboons (genus Theropithecus) 9. Snow leopards (Panthera uncia) 10. Leopards (Panthera pardus) 11. Jaguars (Panthera onca) 12. Tigers (Panthera tigris) 13. Lions (Panthera leo) 14. Bears (family Ursidae) 15. Rhinoceros (family Rhinocerotidae) 16. Elephants (family Elephantidae) 17. Hippopotamuses (family Hippopotamidae) 18. Cape buffalos (Syncerus caffer caffer) 19. Crocodiles (except dwarf and Congo) (family Crocodilidae) 20. Gavials (family Gavialidae) 21. Black caimans (Melanosuchus niger) 22. Komodo dragons (Varanus komodoensis) Persons may possess Class II Wildlife which if he or she obtains a permit from the Fish & Wildlife Conservation Commission. Class II Wildlife which are regulated include: 1. Howler monkeys (genus Alouatta) 2. Uakaris (genus Cacajao) 3. Mangabeys (genus Cercocebus) 4. Guenons (genus Ceropithecus) 5. Bearded sakis (genus Chiropotes) 6. Guereza monkeys (genus Colobus) 7. Celebes black apes (genus Colobus)	FLA. ADMIN. CODE ANN. r. 68A-6-0021-23; 68A-6-002

		8. Idris (genus Indri) 9. Macaques (genus Macaca) 10. Langurs (genus Presbytis) 11. Douc langurs (genus Pygathrix) 12. Snub-nosed langurs (genus Phinopithecus) 13. Proboscis monkeys (genus Nasalis) 14. Servals (Leptailurus serval) 15. European and Canadian lynx (Lynx lynx) 16. Cougars, panthers (Puma concolor) 17. Bobcats (Lynx rufus) 18. Cheetahs (Acinonyx jabatus) 19. Caracals (Caracal caracal) 20. African golden cats (Profelis aurata) 21. Temminck's golden cats (Profelis temmincki) 22. Fishing cats (Prionailurus viverrina) 23. Ocelots (Leopardus pardalis) 24. Clouded leopards (Neofelis nebulosa) 25. Coyotes (Canis latrans) 26. Gray wolves (Canis lupus) (including wolf x domestic hybrids which are 25 percent or less domestic dog) 27. Red wolves (Canis niger) (including wolf x domestic hybrids which are 25 percent or less domestic dog) 28. Asiatic jackals (Canis aureus) 29. Black-backed jackals (Canis mesomelas) 30. Side-striped jackals (Canis adustus) 31. Indian dholes (Cuon alpinus) 32. African hunting dogs (Lycaon pictus) 33. Wolverines (Gulo gulo) 34. Honey badgers (Mellivora capensis) 35. American badgers (Taxides taxus) 36. Old World badgers (Meles meles) 37. Binturongs (Arctictis binturong) 38. Hyenas (all species) (family Hyaenidae) 39. Dwarf crocodiles (Osteolaemus tetraspis) 40. Alligators, caimans (except American alligator) (family Alligatoridae) 41. Ostrich (Struthio camelus) 42. Cassowary (Casuarius spp.) All other wildlife in personal possession not defined as Class I or II Wildlife must obtain a no-cost permit.	
Georgia	Ban	It is unlawful for persons to possess inherently dangerous animals as pets. Inherently dangerous animals include the following: (1) Class Mammalia: (A) Order Marsupialia: Family Macropodidae: Genus Macropus (Kangaroos)--All species; **(B) Order Primates:** **(i) Family Pongidae (gibbons, orangutan, chimpanzees, siamangs, and gorillas)-- All species;** **(ii) Family Cercopithecidae:** **(I) Genus Macaca (macaques)--All species;** **(II) Genus Papio (mandrills, drills, and baboons)--All**	GA. CODE ANN. §27-5-4 and §27-5-5

		species; **(III) Theropithecus gelada (Gelada baboon);** (C) Order Carnivora: (i) Family Canidae: (I) Genus Canis (**wolves**, jackals, and dingos); (II) Chrysocyon brachyurus (maned wolf); (III) Cuon alpinus (red dog); (IV) Lycaon pictus (African hunting dog); (ii) **Family Ursidae (bears)--All species;** (iii) Family Mustelidae--Gulo gulo (wolverine); (iv) **Family Hyaenidae (hyenas)--All species;** **(v) Family Felidae:** **(I) Genus Leo or Panthera or Neofelis (lions, tigers, jaguars, and leopards)-- All species;** **(II) Unica unica (snow leopard);** **(III) Acinonyx jubatus (cheetah);** **(IV) Felis concolor (cougar)--All subspecies;** **(D) Order Proboscidae: Family Elephantidae (elephants)--All species;** **(E) Order Perissodactyla: Family Rhinocerotidae (rhinoceroses)--All species;** (F) Order Artiodactyla: (i) Family Suidae--Phacochoerus aethiopicus (wart hog); **(ii) Family Hippopotamidae--Hippopotamus amphibius (hippopotamus);** (iii) Family Bovidae: (I) Genus Taurotragus (elands)--All species; (II) Boselaphus tragocamelus (nilgais); (III) Bos sauveli (kouprey); (IV) Syncerus caffer (African buffalo); (V) Hippotragus niger (sable); (VI) Oryx gazella (gemsbok); (VII) Addax nasomaculatus (addax); (VIII) Genus Alcelaphus (hartebeests)--All species; (IX) Genus Connochaetes (gnu, wildebeest)--All species; (2) Class Reptilia: **(A) Order Crocodylia:** **(i) Family Crocodylidae (crocodiles, gavials, etc.)--All species;** **(ii) Family Alligatoridae--(alligators and caimans)--All species;** **(B) Order Squamata:** **(i) Suborder Serpentes**: **(I) Family Elapidae (cobras, coral snakes, etc.)--All species;** **(II) Family Viperidae (adders, vipers, etc.)--All species;** **(III) Family Colubridae--All poisonous rear-fanged species (Opisthoglypis);** **(IV) Family Crotalidae (pit vipers)--All species;** **(ii) Suborder Lacertilia: Family Helodermatidae (Gila monsters and beaded lizards)--All species;** (3) Class Osteichthyes: (A) Order Cypriniformes (Suborder Characoidei): Family Characidae (tetra, piranha): Genera Serrasalmus, Serrasalmo, Pygocentrus, Taddyella, Rooseveltiella,	

		Pygopristis (piranhas)--All species; (B) Order Siluriformes: Family Trichomycteridae (parasitic catfishes): Genera Vandellia (candiru) and Urinophilus--All species; and (4) Class Chondrichthyes (cartilaginous fish): Order Rajiformes: Family Potamotrygonidae (fresh-water stingray)--All species.	
Kentucky	Ban	No person may possess inherently dangerous wildlife as pets or at roadside zoos. If you possessed an inherently dangerous exotic animal prior to July 2005 you may keep your animal, but cannot any new animal or breed your current animals. Inherently dangerous wildlife includes the following: **(a) Adders or vipers (Family Viperidae and Crotalidae) (except native species);** **(b) Alligators or caimans (Family Alligatoridae);** **(c) African buffalo (Syncerus caffer);** **(d) Bears (Family Ursidae);** **(e) Cheetah (Acinonyx jubatus);** **(f) Clouded leopard (Neofelis nebulosa);** **(g) Cobras mambas or coral snakes (Family Elapidae);** **(h) Crocodiles (Family Crocodylidae);** **(i) Elephants (Family Elephantidae);** **(j) Gavials (Family Gavialidae);** **(k) Gila monsters or beaded lizards (Family Helodermatidae);** **(l) Hippopotamus (Hippopotamus amphibius);** (m) Honey badger or ratel (Mellivora campensis); (n) Hyenas (Family Hyaenidae), all species except aardwolves (Proteles cristatus); (o) Lions, jaguars, leopards or tigers (Genus Panthera); (p) Old world badger (Meles meles); (q) Primates nonhuman (Order Primates); (r) Rhinoceroses (Family Rhinocerotidae); (s) Sea snakes (Family Hydrophidae); (t) Snow leopard (Uncia uncia); (u) Venomous rear-fanged species (Family Colubridae) except hognose snakes (Genus Heterodon); (v) Wolverine (Gulo gulo); or (w) Hybrids of all species contained in this list.	301 KY. ADMIN. REGS. 2:082
North Carolina	No law	A county or city may by ordinance regulate, restrict, or prohibit the possession of dangerous animals. In addition, an entry permit from the State Veterinarian is required before importing into the state a skunk, fox, raccoon, ringtail, bobcat, North and South American felines, coyote marten, and brushtail possum.	N.C. Sess. Laws 153A-131; and §160A-187; N.C. ADMIN. CODE tit. 2, r. 52B.0212
South Carolina	No law	It is unlawful to possess wolves or coyotes within the state. It is also unlawful to possess wildlife indigenous to the state without a permit. Specifically, one can not possess members of the Cervidae, Suidae, Tayassuidae (peccaries), and	S.C. CODE REGS. §50-11-1765; §50-16-20

		Bovidae (bison, mountain goats, and mountain sheep) families, nor can they possess coyotes, bears, turkeys, and furbearers. However, there are no state laws governing the possession of exotic species such as felines, primates, non-native reptiles and other wildlife not listed above.	
Tennessee	Ban	It is unlawful for persons to possess Class I wildlife unless they were in possession of the animal(s) prior to June 25, 1991. Class I wildlife includes the following: **(A) Mammals:** **(i) Primates--Gorillas, orangutans, chimpanzees, gibbons, siamangs, mandrills, drills, baboons, Gelada baboons;** **(ii) Carnivores:** **(*a*) Wolves--All species;** **(*b*) Bears--All species; and** **(*c*) Lions, tigers, leopards, jaguars, cheetahs, cougars--All species;** **(iii) Order Proboscidia: Elephants--All species;** **(iv) Order Perissodactyla: Rhinoceroses--All species; and** **(v) Order Artiodactyla: Hippopotamus, African buffalo;** **(B) Reptiles:** **(i) Order Crocodylia: Crocodiles and alligators--All species; and** **(ii) Order Serpentes: Snakes--All poisonous species;** and (C) Amphibians: All poisonous species;	TENN. CODE ANN §70-4-401, §70-4-403 and §70-4-404
Virginia	Ban	No person may possess nonnative exotic animals that are classed as predatory or undesirable as a pet. Nonnative exotic animals include 1. Canidae – all species of Wild Dogs, **Wolves**, Coyotes, Coyote hybrids, Jackals, and Foxes **2. Ursidae – all species f bears** 3. Procyonidae - All Species of Raccoons and Relatives 4. Mustelidae – All Species of Weasels, Badgers, Skunks and Otters, except ferrets 5. Viverridae - All Species of Civets, Genets, Lingsangs, Mongooses, and Fossas 6. Herpestidae – All Species of Mongooses **7. Hyaenidae – All Species of Hyenas** 8. Protelidae - Aardwolf **9. Felidae – All Species of wild Cats** **10. Chiroptera - All Species of Bats** 11. Lagomorpha – Lepridae, Lepus europeaeous, European hare 12. Rodentia – All species native to Africa 13. Sciuridae – Prairie dogs **14. Alligatoridae – All Species of Alligators, Caimans**	4 VAC 15-30-10; 15-30-40

		15. Colubridae – Brown tree snake **16. Crocodylidae - All Species of Crocodiles** **17. Gavialidae - All Species of Gavials*** Persons may possess these animals if they are a licensed exhibitor, i.e. commercial, educational or scientific uses. However, there are no state requirements for a person possessing non-human primates.	
West Virginia	No law	The state only regulates native species to the state. A person possessing a native animal in captivity as a pet must obtain a permit. However, there are no state laws governing private possession of exotic animals.	W. VA. CODE § 20-2-51

*Animals bolded are the same species listed in the HB 1614 and SB 1477 - pending North Carolina Bills which will prohibit the keeping of inherently dangerous wild animals.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 3, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1477	Inherently Dangerous Animals.	Senator Jones
HB 38	Missing Persons Alert/Persons w/Dementia.	Representative Earle Representative Parmon Representative Womble Representative Insko
HB 183	Ban Cell Phone Use by School Bus Drivers.	Representative Goforth Representative Saunders Representative Rapp Representative Glazier
HB 535	Criminal Background Reviews- EMS Personnel.	Representative Wainwright
HB 1322	Fire Chiefs Can Request Criminal Histories.	Representative Clary Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, July 3, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1477	Inherently Dangerous Animals.	Senator Jones
HB 183	Ban Cell Phone Use by School Bus Drivers.	Representative Goforth Representative Saunders Representative Rapp Representative Glazier
HB 535	Criminal Background Reviews- EMS Personnel.	Representative Wainwright
HB 1322	Fire Chiefs Can Request Criminal Histories.	Representative Clary Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 3, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on July 3, 2007 with eleven members present. Senator Hartsell introduced pages Katherine Hartman, Erin McBrayer, Jessica Peacock, Brittany Marshall, Jenna McBrayer and Laura Droege and thanked them for their service.

HB 183 (Ban Cell Phone Use by School Bus Drivers.) Senator Hartsell noted there was a Proposed Committee Substitute and called for a motion to accept it for purposes of discussion. Senator Queen so moved, all voted and the motion carried. Representative Rapp was recognized to explain the bill. Ms. Kory Goldsmith, Staff Attorney, gave additional explanation. Ms. Leanne Winner, representing the North Carolina School Boards Association, spoke in favor of the bill. Representative Rapp answered questions from Senators Dorsett and Jones. Senator Bingham moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

HB 535 (Criminal Background Reviews – EMS Personnel.) Representative Wainwright was recognized to explain the bill. Senator Jones offered an amendment and moved that it be adopted. All voted and the motion carried. Mr. Drexdal, representing North Carolina Department of Health and Human Services Division of Facility Services, spoke on the bill. Representative Wainwright and Mr. Pratt answered questions from Senators Bingham and Dorsett. Senator Jones moved for a favorable report as amended with a referral to Finance. All voted and the motion carried.

HB 1322 (Fire Chiefs Can Request Criminal Histories.) Representative Moore was recognized to explain the bill. Senator East moved for a favorable report with a referral to Finance. All voted and the motion carried.

SB 1477 (Inherently Dangerous Animals.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Snow so moved, all voted and the motion carried. Senator Jones was recognized to explain the bill. Ms. Jennifer McGinnis, Staff Attorney, gave additional explanation. Speaking on the bill were: Mindy Stinner, Robert Tregembo, Mary Ann McBride, representing North Carolina Department of Agriculture, Dan Breeding and Fran Tyrr. Senator Hartsell noted that he was naming a sub-committee with Senators Jones, East, Goodall and Swindell, to study the bill and report back to the Committee. The bill may be heard at a latter time.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 03, 2007

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

FAVORABLE

H.B.(CS #2) **535** Criminal Background Reviews- EMS Personnel.
Sequential Referral: None
Recommended Referral: Finance

H.B.(CS #1) **1322** Fire Chiefs Can Request Criminal Histories.
Sequential Referral: None
Recommended Referral: Finance

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **183** Ban Cell Phone Use by School Bus Drivers.
Draft Number: PCS 50726
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 3, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D Tom Ray	NCDA & CS
Pam Hulk	CPT
MaryAnn McBride	NCDA + CS
John Sauls	Chatham Co Animal Control
Andrew Wyatt	NC Assoc. of Reptile Keepers
Joan Troy	NC WRC
Doug Byrd	Commerce
Robert Rucker	US Humane Society
Phil Bradley	NC Museum of Natural Science
Emily Boyette	4507 Calabria Ct. Apex 27502
Andy Jewell	NC Zoo Society
SSP	NCHS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 3, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julia Matson	Conservators' Center, INC. PO Box 882 Mebane, NC 27302
Tanith Tyrr	Cape Fear Serpentarium 20 Orange St. Wilmington NC 28401
Dora Turner	Noah's Landing 1489 Live Oak Rd, Coats, NC 27521
Betsy Carlton	10520 Whitestone Rd Raleigh, NC 27615
Roger Knight	Wyrick Robbins Yates & Ponton Raleigh NC
LEA JANNAKAS	918 Windsor Chase Lane Rock Hill, SC 29730
Dave Davenport	North Carolina Partners in Reptile & Amphibian Conservation and member Inherently Dangerous Animal Study Bill Committee
Walt Sturgeon	NC State Museum Natural Sciences
Alvin Braswell	"
FRAN NOLAN	GRASSROOTS SCIENCE MUSEUMS
John Mabry	COUNTY

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 3, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Regina Goodwin-Crawford	NC Office of EMS 2707 Mail Service Ctr. Raleigh NC 27699
Drexdal Pratt	NC Office of EMS 2707 Mail Service Ctr Raleigh NC 27699
Gordon A. Joyner	NCAREMS PO Box 1914 Goldsboro NC 27533
Joel Faircloth	NCAREMS PO Box 1914 Goldsboro NC 27533
Robert Tregembo	Tregembo Animal Park 5th Carolina Beaches Wilmington NC 28412
PAT FAIRCLOTH	LITTLE MANS ZOO 222 FAIRCLOTH DR CHADBOURN NC 28431
TERRY BEHL	Buffalo Bends Animal Park 3259 Water Plant RJ Maiden, NC 28650
DAN BREEDING	WILD ANIMAL ENCOUNTERS INC PO Box 345 ROLESVILLE NC 27571
Mindy Starer	Conservators' Center Inc, NCEAKA, NCAZS, PO Box 882 Feline Conservation Education Melbourne NC 27302
Douglas Evans	Conservators' Center, Inc. NCAZS/NCEAKA FCF, SART PO Box 882, Melbourne, NC 27302
GARY A. EVANS	Lynnwood Park Zoo 1071 Wells Rd Jacksonville, NC 28540

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 3, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Huai-Jen Tai	
Bob Ford	NC Poultry Fed
Henry Jones	Attorney Raleigh
Robin Smith	DENR
Elizabeth Sluf	DENR
Mary Bethea	AARP-NC
Jon Carr	NC Assoc Regd Nurses
John Bowdish	Attorney General
Ray Stanley	NCDA & CS
Ashley Walker	AARP-NC
Howard Lee	NCDA+CS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1477

Short Title:	Inherently Dangerous Animals.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT INHERENTLY DANGEROUS ANIMALS POSE AND TO PROTECT THE WELFARE OF INHERENTLY DANGEROUS ANIMALS.

The General Assembly of North Carolina enacts:

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

"Article 7.

"Protection of Inherently Dangerous Animals.

"**§ 19A-80. Definitions.**

(a) "Animal control authority" means the municipal or county animal control agency, or a county sheriff in an area that does not have an animal control agency.

(b) "Inherently dangerous animal" means any nondomesticated animal for which evidence demonstrates that unprotected human contact with the species can result in a life threatening injury or disease to those who come in contact directly or indirectly. The following are examples of inherently dangerous animals:

(1) Class Mammalia:

a. Order Chiroptera – all bats.

b. Order Carnivora:

1. Family Canidae – only wolves and wolf hybrids.

2. Family Felidae – only lions, tigers, cheetahs, jaguars, cougars, leopards, snow leopards, clouded leopards.

3. Hyaenidae – all hyena species.

4. Family Ursidae – all bear species.

c. Order Primates – all species including apes, Old and New World monkeys, and prosimians.

d. Order Proboscidae – all elephant species.

e. Order Perissodactyla – only rhinoceroses.

f. Order Artiodactyla:
1. Family Hippotamidae – all species of hippopotamus.
2. Family Bovidae – only gaur, banteng, kouprey, anoa, Cape buffalo.

(2) Class Reptilia:
a. Order Crocodilia – all species.
b. Order Squamata:
1. Family Helodermatidae – all species.
2. Family Boidae – only green anaconda.
3. Family Pythonidae – only Amethystine python, African rock python, and Reticulated python.
4. All venomous snakes not indigenous to North Carolina.

(c) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative of the entity.

(d) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, an inherently dangerous animal.

(e) "Wildlife sanctuary" means a facility that cares for inherently dangerous animals and:

(1) Is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code;

(2) Does not commercially trade in animals listed as inherently dangerous animals, including the offspring, parts, and by-products of such animals;

(3) Does not propagate animals; and

(4) Does not allow direct contact between the public and animals.

"**§ 19A-81. Exemptions.**

(a) The provisions of this Article do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).

(2) Duly incorporated nonprofit animal protection organizations housing an inherently dangerous animal at the written request of the animal control authority.

(3) Federal or State wildlife enforcement officers acting under the scope of their authority.

(4) Animal control or law enforcement agencies or officers acting under the authority of this act.

(5) Licensed veterinary hospitals or clinics.

(6) Any wildlife sanctuary as defined in G.S. 19A-80(e).

(7) A university, college, laboratory, or other research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.D.A. § 2131.

(8) Circuses, defined as incorporated, Class C licensees under the Animal Welfare Act, 7 U.S.D.A. § 2131, as amended, that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any listed animal to the public as part of a carnival or for the purpose of (i) exhibition; or (ii) entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.

(9) A person who does not reside in this State and is traveling through this State with listed species if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(10) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

"**§ 19A-82. Keeping of inherently dangerous animals.**

(a) Except as otherwise provided in this Article, it is unlawful for a person to import into, possess, purchase, breed, or sell within this State, by any means, an inherently dangerous animal, including transactions conducted via the Internet.

(b) A person in legal possession of an inherently dangerous animal prior to January 1, 2008, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life, subject to the following conditions:

(1) The person shall maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to the effective date of this statute.

(2) The person shall present paperwork described in subdivision (1) of this subsection to an animal control or law enforcement authority upon request.

(3) The person shall be in compliance with the provisions set forth in G.S. 19A-83.

(c) A legally-possessed inherently dangerous animal shall not be replaced by a person who does not have an exemption as established in G.S. 19A-81.

"**§ 19A-83. Conditions under which grandfathered animals can be kept.**

A person who is in legal possession of an inherently dangerous animal prior to January 1, 2008, may keep possession of the animal for the remainder of the animal's life under the following conditions:

(1) Within 90 days of January 1, 2008, the possessor of an inherently dangerous animal shall register with the animal control authority. The registration shall include the person's name, address, telephone number, and a complete inventory of each inherently dangerous animal that the person possesses. The inventory shall include the following information: (i) the number and species of each regulated animal; (ii) the identification of the animal pursuant to subdivision (2) of this

section; (iii) the exact location where each regulated animal is kept; and (iv) the age, sex, color, weight, and any other distinguishing marks of each regulated animal.

(2) Every inherently dangerous animal shall be uniquely identified using species appropriate, safe methods, and this identification shall be reported to the animal control authority.

(3) A possessor shall not breed an inherently dangerous animal.

(4) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon discovery that the animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a permitted animal.

(5) A possessor of an inherently dangerous animal shall notify local law enforcement and local fire departments what types of animals the possessor has.

(6) A possessor shall develop, and keep at the location where the inherently dangerous animal is being kept, a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes. This plan shall also be filed with the local sheriff's department, and police department, if applicable.

(7) A possessor shall not trade an inherently dangerous animal or replace an inherently dangerous animal that was in his or her possession prior to January 1, 2008.

(8) A possessor of an inherently dangerous animal shall obtain and maintain a liability insurance policy with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property in an amount of not less than one million dollars ($1,000,000). The possessor shall present proof of possession and maintenance of liability insurance upon request to the animal control or law enforcement authority within 24 hours of the request.

(9) In addition to complying with the requirements set forth in this section, the possessor shall comply with any and all applicable federal, State, or local law, rule, regulation, ordinance, permit, or other permission. Failure to comply with any such law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Article.

"**§ 19A-84. Enforcement of Article.**

The animal control authority and its staff and agents, local law enforcement agents, county sheriffs, and federal or State wildlife enforcement officers may enforce the provisions of this Article.

"**§ 19A-85. Inspection.**

The possessor of an inherently dangerous animal shall, at all reasonable times, allow the animal control authority or other persons designated under G.S. 19A-84 to enter the premises where the animal is kept to ensure compliance with this Article.

"**§ 19A-86. Confiscation and disposition of inherently dangerous animals.**

(a) The animal control authority or other persons designated under G.S. 19A-84 may confiscate an inherently dangerous animal under the following conditions:

(1) The animal control or other persons designated under G.S. 19A-84 has probable cause to believe that the animal was acquired after January 1, 2008;

(2) The animal poses a public safety or health risk;

(3) The animal is in poor health and condition as a result of the owner's actions or inaction; or

(4) The animal is being held in contravention of this Article.

(b) An inherently dangerous animal that is confiscated under this section may be returned to the possessor only if the animal control authority or other persons designated under G.S. 19A-84 establishes that the possessor had possession of the animal prior to January 1, 2008, the return does not pose a public safety or health risk, and the possessor is in compliance with this act.

(c) The animal control or other persons designated under G.S. 19A-84 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation.

(d) The animal control authority or other persons designated under G.S. 19A-84 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation, and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(e) If an inherently dangerous animal that is confiscated under this section is not returned to the possessor, the animal control or other persons designated under G.S. 19A-84 may release the animal to a facility such as a sanctuary or a facility exempted pursuant to G.S. 19A-81. If the animal control or law enforcement authority is unable to relocate the animal within a reasonable period of time, it may euthanize the animal.

(f) If an inherently dangerous animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under G.S. 19A-84 may exercise judgment in attempting to recapture the animal or in killing the animal.

(g) This section applies to animal confiscations on or after January 1, 2008.

"**§ 19A-87. Penalties.**

A person who violates any provision of this Article is liable for a civil penalty of not less than two hundred dollars ($200.00) and not more than two thousand dollars ($2,000) for each animal with respect to which there is a violation and for each day the violation continues.

"**§ 19A-88. Local governing bodies.**

Pursuant to its authority under G.S. 153A-131 and G.S. 160A-187, a city or county may adopt an ordinance governing inherently dangerous animals that is more restrictive than this Article. Such an ordinance may apply to animals not covered by this Article, provide caging standards, provide stricter care and treatment standards, or otherwise restrict or prohibit the possession of inherently dangerous animals.

"**§ 19A-89. Severability.**

If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2008, and applies to inherently dangerous animals existing in this State on or after that date. The local animal control authority shall implement and administer the provisions of Article 6 of Chapter 19A of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1477
PROPOSED COMMITTEE SUBSTITUTE S1477-CSRIf-19 [v.6]

7/3/2007 9:51:12 AM

Short Title: Inherently Dangerous Animals. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT INHERENTLY DANGEROUS WILD ANIMALS POSE, TO PROTECT THE WELFARE OF INHERENTLY DANGEROUS ANIMALS, AND TO AUTHORIZE A FEE FOR REGISTERING INHERENTLY DANGEROUS WILD ANIMALS.

The General Assembly of North Carolina enacts:

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

"Article 7.

"Protection of Inherently Dangerous Wild Animals.

"**§ 19A-80. Definitions.**

(a) "Animal control authority" means the municipal or county animal control agency, or a county sheriff in an area that does not have an animal control agency.

(b) "Inherently dangerous wild animal" means any of the following types of animals, and any hybrids of these animals unless otherwise specified:

(1) Order Chiroptera – all bats.

(2) Order Carnivora:

a. Family Canidae – only wolves, not including wolf hybrids.

b. Family Felidae – only lions, tigers, cheetahs, jaguars, cougars, leopards, snow leopards, and clouded leopards.

c. Hyaenidae – all hyena species.

d. Family Ursidae – all bear species.

(3) Order Primates – all species including apes, Old and New World monkeys, and prosimians.

(4) Order Proboscidae – all species of elephant.

(5) Order Perissodactyla – only rhinoceroses.

(6) Family Hippotamidae – all species of hippopotamus.

(7) Order Crocodilia – all species.
(8) Family Helodermatidae – all species.

(c) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any employee, agent, or representative of the entity.

(d) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, an inherently dangerous wild animal.

(e) "Wildlife sanctuary" means a facility that cares for inherently dangerous wild animals and:

(1) Is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code;
(2) Does not commercially trade in animals listed as inherently dangerous wild animals, including the offspring, parts, and by-products of such animals;
(3) Does not propagate animals; and
(4) Does not allow direct contact between the public and animals.

"**§ 19A-81. Exemptions.**

(a) The provisions of this Article do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).
(2) Duly incorporated nonprofit animal protection organizations housing an inherently dangerous wild animal at the written request of the animal control authority.
(3) Federal or State wildlife enforcement officers acting under the scope of their authority.
(4) Animal control authorities or law enforcement agencies or officers acting under the authority of this act.
(5) Licensed veterinary hospitals or clinics.
(6) Any wildlife sanctuary as defined in G.S. 19A-80.
(7) A university, college, laboratory, or other research facility that holds a Class R registration pursuant to 9 Code of Federal Regulations (January 1 2007 Edition).
(8) Circuses that are incorporated and hold a Class C license pursuant to 9 Code of Federal Regulations Part 2 (January 1 2007 Edition) that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any listed animal to the public as entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.

(9) A person who does not reside in this State and is traveling through this State with an inherently dangerous wild animal if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(10) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

(11) A "production company," as defined in G.S. 105-164.3, that uses an inherently dangerous wild animal in the production of original motion pictures or television images for theatrical, commercial, advertising, or educational purposes.

(12) United States Department of Agriculture (U.S.D.A.) Class C license holders that meet the following conditions:

a. The license holder has no criminal record;

b. The license holder's facility that houses an inherently dangerous wild animal(s) is open to the public and holds advertised regular daily business hours;

c. The license holder maintains a liability insurance policy with an insurer authorized or approved to write such insurance in this state that covers claims for injury or damage to persons or property in an amount of not less than two million dollars ($2,000,000) per facility;

d. The license holder does not allow photo opportunities of an inherently dangerous wild animal off the property where the animal is housed, except for veterinary care;

e. The license holder has a written plan, filed with the local sheriff's department and police department, if applicable, for the quick and safe recapture or destruction of the inherently dangerous wild animal in the event the inherently dangerous wild animal escapes, this shall include but not be limited to, written protocols for training staff on methods of safe recapture of escaped inherently dangerous wild animals;

f. The license holder has access to appropriate drugs for chemical immobilization and has a member of staff who has firearm training and proficiency in order to recapture an escaped inherently dangerous wild animal;

g. The license holder does not allow direct contract between inherently dangerous wild animals and any person, which includes but not limited to, members of the public and the owner's family and friends, other than the person possessing the animal, the registered designated handler(s) or a veterinarian administering medical examination, treatment or care. "Direct contact" means any situation in which an individual may potentially touch or otherwise come into physical contact with an inherently dangerous wild animal or its housing;

h. The U.S.D.A. shall notify the local animal control authority with jurisdiction over a facility of a license holder exempted under this subdivision upon suspension of the license holder's U.S.D.A. license.

"**§ 19A-82. Keeping of inherently dangerous wild animals.**

(a) Except as otherwise provided in this Article, it is unlawful for a person to import into, possess, purchase, breed, or sell within this State, by any means, an inherently dangerous wild animal, including transactions conducted via the Internet.

(b) A person in legal possession of an inherently dangerous wild animal prior to January 1, 2008, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life, subject to the following conditions:

(1) The person shall maintain: (i) veterinary records; and (ii) acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to the effective date of this statute.

(2) The person shall present the records described in subdivision (1) of this subsection to an animal control or law enforcement authority upon request.

(3) The person shall be in compliance with the provisions set forth in G.S. 19A-83.

(c) A legally-possessed inherently dangerous wild animal shall not be replaced by a person who does not have an exemption as established in G.S. 19A-81.

"**§ 19A-83. Conditions under which grandfathered animals can be kept.**

A person who is in legal possession of an inherently dangerous wild animal prior to January 1, 2008, may keep possession of the animal for the remainder of the animal's life under the following conditions:

(1) Within 90 days of January 1, 2008, the possessor of an inherently dangerous wild animal shall register with the animal control authority. The authority may charge a fee to cover the costs of registration and record-keeping under this section. The registration shall include the person's name, address, telephone number, and a complete inventory of each inherently dangerous wild animal that the person possesses. The inventory shall include the following information: (i) the number and species of each regulated animal; (ii) the identification of the animal pursuant to subdivision (2) of this section; (iii) the exact location where each regulated animal is kept; and (iv) the age, sex, color, weight, and any other distinguishing marks of each regulated animal.

(2) Every inherently dangerous wild animal shall be uniquely identified using species appropriate, safe methods, and this identification shall be reported to the animal control authority.

(3) A possessor shall not breed an inherently dangerous wild animal.

(4) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately

upon discovery that the animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a permitted animal.

(5) A possessor of an inherently dangerous wild animal shall notify local law enforcement and local fire departments what types of inherently dangerous wild animals the possessor has.

(6) A possessor shall develop, and keep at the location where the inherently dangerous wild animal is being kept, a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes. This plan shall also be filed with the local sheriff's department, and police department, if applicable.

(7) A possessor shall not trade an inherently dangerous wild animal or replace an inherently dangerous wild animal that was in his or her possession prior to January 1, 2008.

(8) A possessor of an inherently dangerous wild animal shall obtain and maintain a liability insurance policy with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property in an amount of not less than one million dollars ($1,000,000). The possessor shall present proof of possession and maintenance of liability insurance upon request to the animal control or law enforcement authority within 24 hours of the request.

(9) In addition to complying with the requirements set forth in this section, the possessor shall comply with any and all applicable federal, State, or local laws, rules, regulations, ordinances, permits, or other permissions. Failure to comply with any applicable law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Article.

"**§ 19A-84. Enforcement of Article.**

The animal control authority and its staff and agents, local law enforcement agents, county sheriffs, and federal or State wildlife enforcement officers may enforce the provisions of this Article.

"**§ 19A-85. Inspection.**

The possessor of an inherently dangerous wild animal shall, at all reasonable times, allow the animal control authority or other persons designated under G.S. 19A-84 to enter the premises where the animal is kept to ensure compliance with this Article.

"**§ 19A-86. Confiscation and disposition of inherently dangerous wild animals.**

(a) The animal control authority or other persons designated under G.S. 19A-84 may confiscate an inherently dangerous wild animal under the following conditions:

(1) The animal control authority or other persons designated under G.S. 19A-84 has probable cause to believe that the animal was acquired after January 1, 2008;

(2) The animal poses a public safety or health risk;

(3) The animal is in poor health and condition as a result of the owner's actions or inaction; or

(4) The animal is being held in contravention of this Article.

(b) An inherently dangerous wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or other persons designated under G.S. 19A-84 establishes that the possessor had possession of the animal prior to January 1, 2008, the return does not pose a public safety or health risk, and the possessor is in compliance with this act.

(c) The animal control authority or other persons designated under G.S. 19A-84 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation, and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(d) If an inherently dangerous wild animal that is confiscated under this section is not returned to the possessor, the animal control authority or other persons designated under G.S. 19A-84 may release the animal to a facility such as a sanctuary or a facility exempted pursuant to G.S. 19A-81. If the animal control authority or other person designated under G.S. 19A-84 is unable to relocate the animal within a reasonable period of time, it may euthanize the animal.

(e) If an inherently dangerous wild animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under G.S. 19A-84 may exercise judgment in attempting to recapture the animal or in killing the animal.

(f) This section applies to animal confiscations on or after January 1, 2008.

"**§ 19A-87. Penalties.**

A person who violates any provision of this Article is liable for a civil penalty of not less than two hundred dollars ($200.00) and not more than two thousand dollars ($2,000) for each animal with respect to which there is a violation and for each day the violation continues.

"**§ 19A-88. Severability.**

If any part of this Article is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2008, and applies to inherently dangerous wild animals existing in this State on or after that date.

SENATE BILL 1477:
Inherently Dangerous Animals

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 27, 2007
Introduced by:	Sen. Jones	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S1477-CSRI		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1477 would make it unlawful for a person to import into, possess, purchase, breed, or sell within this State, an inherently dangerous wild animal, except in certain circumstances. A person violating the provisions of the PCS would be liable for a civil penalty of not less than $200.00 and not more than $2,000 for each animal with respect to which there is a violation and for each day the violation continues. The PCS also authorizes animal control authorities and other law enforcement personnel to confiscate an inherently dangerous wild animal kept in contravention of the provisions of the PCS.***

The provisions of the PCS would become effective January 1, 2008, and would apply to inherently dangerous wild animals existing in this State on or after that date.

[As introduced, this bill was identical to H1614, as introduced by Rep. Jones, which is currently in House Environment and Natural Resources .]

BACKGROUND: Section 32 of S.L. 2006-248 directed the Department of Environment and Natural Resources, in consultation with the North Carolina Zoological Park and the Wildlife Resources Commission, to study "the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of best providing that protection to the public while also protecting the welfare of inherently dangerous animals." The study committee met four times in 2006 -2007 and submitted a report of their recommendations to the General Assembly in May 2007.[1]

BILL ANALYSIS: The PCS would create a new Article 7 in Chapter 19A of the General Statutes that would –

- Make it unlawful for a person to import into, possess, purchase, breed, or sell within this State, an inherently dangerous wild animal, except in certain circumstances. The PCS includes a list of animals to be classified as inherently dangerous wild animals.
    - Exemptions to the prohibition include: Institutions accredited by the American Zoo and Aquarium Association; certain nonprofit animal protection organizations housing an inherently dangerous wild animal at the written request of the animal control authority; federal or State wildlife enforcement officers; animal control or law enforcement agencies or officers; licensed veterinary hospitals or clinics. wildlife sanctuaries; universities, colleges, laboratories, or other research facilities licensed under federal law; circuses licensed under federal law that are temporarily in the State, a non-resident of the State in the State with an inherently dangerous wild animal for not more than 72 hours; indigenous species regulated by the Wildlife Resources Commission; production companies that use inherently dangerous wild animals in the production of original motion pictures or television images for theatrical, commercial, advertising, or educational purposes.

[1] To be distributed with bill summary.

- Grandfathered possession of inherently dangerous wild animals, under certain circumstances: A person in legal possession of an inherently dangerous wild animal prior to January 1, 2008 may keep possession of the animal for the remainder of the animal's life, subject to the following conditions: (1) maintenance of certain records to be presented to animal control or law enforcement authorities upon request; (2) timely registration of the animal with the animal control authority; (3) unique identification of the animal using species appropriate, safe methods, which must be reported to the animal control authority; (4) the animal may not be bred; (5) immediate notification of animal control or law enforcement authorities upon discovery that the animal has escaped; (6) development and maintenance of a written plan for the quick and safe recapture or destruction of the animal in the event the animal escapes; (7) the animal must not be traded or replaced; (8) procurement and maintenance of a liability insurance policy that covers claims for injury or damage to persons or property in an amount of not less than $1,000,000; (9) compliance with any applicable federal, State, or local laws, rules, regulations, ordinances, permits, or other permissions.

- Confiscation of inherently dangerous wild animal by authorities: An animal control or law enforcement authority may confiscate an animal if: (1) it has probable cause to believe that the animal was acquired after January 1, 2008; (2) the animal poses a public safety or health risk; (3) the animal is in poor health and condition as a result of the owner's actions or inaction; o (4) the animal is being held in contravention of the provisions of the PCS.

  This section includes procedures for notice of the confiscation; return of the animal based on certain findings, and if not returned then procedures for placement or euthanasia; and discretion of authorities to act in response to release or escape of an inherently dangerous wild animal.

- Penalties: A person violating the provisions of the PCS would be liable for a civil penalty of not less than $200.00 and not more than $2,000 for each animal with respect to which there is a violation and for each day the violation continues.

EFFECTIVE DATE: The provisions of the PCS would become effective January 1, 2008, and would apply to inherently dangerous wild animals existing in this State on or after that date.

S1477e1-SMRI-CSRI

NCDA&CS Comments Regarding SB 1032: Study Inherently Dangerous Animals and Study Commission Activities

February 2, 2007

The study bill language is included for clarity and is marked in bold type. NCDA&CS' comments follow each section.

SB 1032: SECTION 1. The Department of Environment and Natural Resources, in consultation with the North Carolina Zoological Park and the Wildlife Resources Commission, shall study the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of best providing that protection to the public while protecting the welfare of inherently dangerous animals as well. In developing recommendations, the Department shall consult with the following entities or groups, or appropriate representatives of those entities or groups:

(1) The Department of Agriculture and Consumer Services.
(2) The Division of Public Health of the Department of Health and Human Services.
(3) The North Carolina State University College of Veterinary Medicine.
(4) The State Animal Response Team.
(5) Local law enforcement officials.
(6) Local animal control officials.
(7) Wild animal breeders.
(8) Exotic pet hobbyists.
(9) Commercial pet retailers.
(10) Small zoo owners.
(11) Humane organizations.
(12) Any other entities or groups whose interests may be affected by proposed regulations.

DENR included NCDA&CS in the Study Commission (SC) meetings. Dr. Mary Ann McBride and Dr. Tom Ray have represented NCDA&CS at the 4 SC meetings. It remains unclear to NCDA&CS if DENR has consulted adequately with exotic pet hobbyists, commercial pet retailers, and the other entities whose interests may be affected, as directed by Section 1 above.

Based on the discussion held in the SC meetings, NCDA&CS considers that DENR has yet to sufficiently study the need to protect the public in an effective manner, as directed in Section 1. The initial meeting began with implied intent by DENR that there are inherently dangerous animals requiring regulation/banning, and the group was tasked immediately with developing a list of such animals. It should also be noted that no working definition of "inherently dangerous" was determined until the second half of

the fourth meeting, even though NCDA&CS members and others requested that such be considered at the initial and second meetings.

Since the State Veterinarian and/or State Public Health Director already has the authority to quarantine diseased animals or to require permits for the importation of animals that present a disease risk, any listing of inherently dangerous animals pursuant to this SC should be based on the physical injury risk posed by the species, rather than its disease risk.

No data summarizing documented animal attack incidents, potential risks for such incidents, and the prevalence of species of concern or similar materials were presented to the SC members by DENR. The only data shared specifically relating to the above was presented by a member of NCARK at the Public Comment session of the third meeting and by a member of the Animal Protection Institute, known to support banning of exotic animals through legislative action in other states (not unbiased).

For the SC to make an accurate, fair recommendation regarding the need to protect the public (the initial charge of the study bill), such data should have been provided to the SC and carefully considered to determine whether there is a true need for this type of protection via new legislation, based on prevalence and risk posed by such species.

A cursory review of current General Statutes 153A-131 and GS 160A-187 by NCDA&CS legal counsel indicates that both counties and cities already have the authority to regulate possession or harboring of dangerous animals, as outlined below:

> **§ 153A-131. Possession or harboring of dangerous animals.**
> A county may by ordinance regulate, restrict, or prohibit the possession or harboring of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1973, c. 822, s. 1; 1977, c. 407, s. 1.)

> **§ 160A-187. Possession or harboring of dangerous animals.**
> A city may by ordinance regulate, restrict, or prohibit the possession or harboring within the city of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1971, c. 698, s. 1; 1977, c. 407, s. 2.)

NCDA&CS considers that additional study of current state and local regulations needs to be performed to sufficiently satisfy the request made by Bill 1032-1 regarding consideration of the need for additional regulations. Perhaps no state-level regulations are appropriate at this time.

SECTION 2. The Department shall report its findings to the General Assembly no later than the convening of the 2006 Regular Session of the 2005 General Assembly. Any legislation recommended in the report may be considered during the 2006 Regular Session of the 2005 General Assembly.

No NCDA&CS comment.

SECTION 3. The report made by the Department of Environment and Natural Resources pursuant to this act shall include:

(1) A list of the types of animals that possess such inherently dangerous characteristics that they should not be owned or possessed by persons who do not have special expertise or training, and a determination as to whether these animals should be grouped into classes for differential treatment based upon the nature and extent of the threat they pose to the public. This list should also include information about the nature of the dangers posed by each type of animal.

NCDA&CS respectfully considers that this item's goals have not been met by the SC. Only a list of those animals considered "inherently dangerous" has been developed. No consideration regarding possession was made during list compilation, only whether that species was "inherently dangerous." No grouping of those animals listed for differential treatment was made, nor were the specific natures of the dangers posed defined in the SC list.

(2) A suggested means for regulating ownership of certain animals, including a means of enforcing any proposed restrictions on the ownership or possession of those animals. This portion of the report may include an evaluation of regulations in place in other jurisdictions that have proven to be effective in protecting the public from inherently dangerous animals.

NCDA&CS respectfully considers that this item's goals have not been met by the SC. No thorough discussion of regulations in place in other jurisdictions was held, other than limited information provided by the Animal Protection Institute, which was based on their activities in promoting banning legislation in other states. In addition, no effective consideration of regulations already in place in the General Statutes or at local government levels was made, other than the information provided by Dr. Carl Williams (DHHS) that was never discussed during the SC meetings.

A significant amount of discussion was held regarding "which state agency should regulate or oversee the proposed bans," even though no consensus regarding species or legislative actions under consideration had been made. NCDA&CS strongly objects to any indication that the oversight of exotic species of animals should come under the jurisdiction of this agency. Exotic species do not have a role in the mission of this department, which is focused on agriculture and the production of food for our state.

(3) **A plan for addressing inherently dangerous animals that are indigenous species within the jurisdiction of the Wildlife Resources Commission under Article 22 of Chapter 113 of the General Statutes and a consideration as to whether any potential legislation should broadly address the keeping of any wildlife as pets, whether indigenous or not, and whether inherently dangerous or not. This portion of the report should result from extensive consultation with the Wildlife Resources Commission.**

Based on competent information provided by the NCWRC representative, Ms. Joan Troy, NCWRC already has all necessary authority to address the possession of indigenous wildlife species. NCWRC has been very cooperative in exploring this item. It is not the intent of the NCWRC to have any oversight of any exotic animal species under consideration by this SC.

(4) **A recommendation as to whether persons owning or possessing animals covered by any proposed restrictions should be grandfathered in under a regulatory scheme and the appropriate means of grandfathering those persons in, including consideration of whether certain animals are so threatening to the public safety that the grandfathering of untrained owners or possessors should not be allowed under any circumstances.**

NCDA&CS notes that the strict limitations to be placed on those permitted to be grandfathered as proposed by DENR will eliminate the affected entities' ability to continue doing business. By prohibiting breeding or replacement of animals that die, undue burden will be placed on the private zoos, breeding facilities and similar entities. Careful consideration of the economic impact must be made before any form of legislation should be considered.

(5) A recommended list, as comprehensive as possible, of persons and entities that should be exempted from the proposed restrictions on ownership or possession of the animals covered by any proposed restrictions, such as zoos, veterinary hospitals, wildlife sanctuaries, research institutions, and the like.

NCDA&CS considers that additional discussion with those entities to be impacted by regulations, bans, or grandfathering limitations is imperative at this time. The limitations on those entities will have significant negative impacts on their ability to continue doing business.

In summary, NCDA&CS states that additional study and evaluation of the following items is essential prior to the General Assembly's consideration of any form of proposed regulatory or banning activities regarding "inherently dangerous animals":

- Study of current regulations in place at state and local levels
- Study of incidence, risk, perceived risk, and prevalence of those species involved in incidents
- Fiscal impact of regulatory or banning implementation on affected entities, such as hobbyists, private zoos, etc.

NCDA&CS wishes to emphasize that the regulation of inherently dangerous, non-domesticated animals is not compatible with its mission, and NCDA&CS would be opposed to any legislation giving NCDA&CS the responsibility for regulating such animals.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 38

Committee Substitute Favorable 4/4/07

Short Title: Missing Persons Alert/Persons w/Dementia. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PUBLIC ALERT TO BE ISSUED WHEN A PERSON WITH DEMENTIA OR OTHER COGNITIVE IMPAIRMENT IS REPORTED MISSING, TO INCLUDE CAREGIVERS AMONG THOSE WHO CAN REPORT AN INDIVIDUAL MISSING, AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE PROVISIONS CONCERNING THE NORTH CAROLINA CENTER FOR MISSING PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499 reads as rewritten:

"**§ 143B-499. Submission of missing person reports to the Center.**

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual may submit a missing person report to the Center of any missing child or missing person, regardless of the circumstances, after having first submitted a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing, regardless of the circumstances."

SECTION 2. G.S. 143B-499.1 reads as rewritten:

"**§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child."

SECTION 3. G.S. 143B-499.3 reads as rewritten:

"§ 143B-499.3. Duty of individuals to notify Center and law-enforcement agency when missing person has been located.

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual who submits a missing person report to a law-enforcement agency or to the Center, shall immediately notify the law-enforcement agency and the Center of any individual whose location has been determined. The Center shall confirm the deletion of the individual's records from the FBI/NCIC's missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law-enforcement agency having jurisdiction of the records."

SECTION 4. G.S. 143B-499.5 reads as rewritten:

"§ 143B-499.5. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in G.S. 143B-499~~143B-499.3~~ of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting."

SECTION 5. Part 5A of Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-499.8. North Carolina Silver Alert System established.

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the information as quickly as possible when the missing person is 18 years of age or older, and the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive

impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing adult meeting the criteria of this subsection when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 183

Committee Substitute Favorable 4/30/07

Committee Substitute #2 Favorable 5/15/07

Short Title: Ban Cell Phone Use by School Bus Drivers. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY OR A MOBILE TELEPHONE TO ENGAGE IN A CALL WHILE OPERATING A PUBLIC OR PRIVATE SCHOOL BUS, WHILE OPERATING A SCHOOL ACTIVITY BUS, OR WHILE PROVIDING CONTRACTED TRANSPORTATION SERVICES FOR A PUBLIC OR PRIVATE SCHOOL IN ANY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-140.6. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Additional technology. – Any technology that provides access to digital media such as a handheld camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access such service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(4) Use. – Hold a mobile telephone to, or in the immediate proximity of, the user's ear or use a hands-free mobile telephone device to engage in a call.

(5) Engage in a call. – Talking into or listening on a mobile telephone but shall not include holding a mobile telephone to activate, deactivate, or initiate a function of such telephone.

(6) Immediate proximity. – That distance as permits the user of a mobile telephone to hear telecommunications transmitted over such mobile telephone but shall not require physical contact with such user's ear.

(7) Emergency situation. – A situation in which medical concerns, unsafe road conditions, public safety concerns, or mechanical failures create a risk of harm for the operator or passengers of a public or private school bus or a school activity bus or a vehicle providing contracted transportation services for a public or private school.

(b) Offense. – Except as otherwise provided in this section, no person shall use additional technology or a mobile telephone to engage in a call while operating a public or private school bus or a school activity bus or while providing contracted transportation services for a public or private school in any vehicle. An operator of a public or private school bus or school activity bus or other contracted vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her ear while such vehicle is being operated is presumed to be engaging in a call within the meaning of this section. The presumption established by this subsection is rebuttable by evidence tending to show that the operator was not engaged in a call.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone or additional technology, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone or additional technology for the sole purpose of communicating in an emergency situation.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones or additional technology by operators of the vehicles specified in subsection (b) of this section.

(f) A violation of this section shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00)."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 183

Committee Substitute Favorable 4/30/07

Committee Substitute #2 Favorable 5/15/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H183-PCS50726-RC-52

Short Title: Ban Cell Phone Use by School Bus Drivers. (Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE A MOBILE TELEPHONE OR ADDITIONAL TECHNOLOGY WHILE OPERATING A PUBLIC OR PRIVATE SCHOOL BUS, WHILE OPERATING A SCHOOL ACTIVITY BUS, OR WHILE TRANSPORTING STUDENTS FOR HIRE IN ANY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.4. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Additional technology. – As defined in G.S. 20-137.3(a)(1).

(2) Emergency situation. – Circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a school bus.

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

(4) School bus. – As defined in G.S. 20-4.01(27)d4. The term also includes any school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle transporting public, private, or parochial school students for compensation.

(b) Offense. – Except as otherwise provided in this section, no person shall operate a school bus on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the school bus is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone in a stationary school bus.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone or additional technology, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone or additional technology associated with a mobile telephone for the sole purpose of communicating in an emergency situation.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones or additional technology associated with a mobile telephone by operators of school buses.

(f) Penalty. – A violation of this section shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a school bus."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 183:
Ban Cell Phone Use by School Bus Drivers

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 28, 2007
Introduced by:	Reps. Rapp, Goforth, Saunders, Glazier	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to Third Edition H183-CSRC-52		

SUMMARY: ***House Bill 183 would make it a Class 2 misdemeanor for drivers to use mobile telephones while operating school buses or providing contracted transportation services for schools, subject to certain exceptions for emergency situations.***

The Proposed Committee Substitute revises the "Definitions" portion of the bill to reflect existing terms. It clarifies that the prohibition does not apply to a stationary school bus. It specifies that a violation will not result in drivers license or insurance points, nor will a violation constitute negligence per se or contributory negligence.

CURRENT LAW: G.S. 20-137.3 currently prohibits the use of a mobile telephone by a person under the age of 18 while operating a motor vehicle, subject to certain exceptions for emergency situations and contacting parents.

BILL ANALYSIS: House Bill 183 would prohibit a person from using a mobile telephone or additional technology associated with a mobile telephone while operating a moving school bus. The prohibition would not apply to the use of a mobile phone or additional technology associated with the mobile phone if the school bus is stationary, or the use of a mobile phone in an emergency situation. Violation of the section would be a Class 2 misdemeanor and would be punishable by a fine of not less than one hundred dollars ($100.00)[1]. A violation would not result in the assessment of either drivers license or insurance points. A violation would not constitute negligence per se or contributory negligence.

The following definitions would apply:

A "school bus" includes:

- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.
- A school activity bus, which is defined as a vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.
- Any vehicle transporting public, private, or parochial school students for compensation.

A "mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one

[1] Fines for Class 2 misdemeanors may not exceed $1,000. G.S. 15A-1340.23(b).

hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

An "emergency situation" includes circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a school bus.

A violation of the law would not constitute grounds to confiscate the mobile telephone or the additional technology associated with the mobile telephone. Local ordinances regulating the use of a mobile telephone while operating a school bus would be prohibited.

EFFECTIVE DATE: This bill would become effective December 1, 2007 and apply to offenses committed on or after that date.

Kara McCraw, counsel to House Education and Brad Krehely, counsel to House Judiciary I, substantially contributed to this summary.

H0183e3-SMRC-CSRC-52

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 535

Committee Substitute Favorable 3/29/07
Committee Substitute #2 Favorable 4/23/07

Short Title: Criminal Background Reviews - EMS Personnel. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CRIMINAL BACKGROUND REVIEWS FOR CURRENT AND FUTURE EMS PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-159 is amended by adding a new subsection to read:

"(g) An individual who applies for EMS credentials, seeks to renew EMS credentials, or holds EMS credentials is subject to a criminal background review by the Department. At the request of the Department, the Emergency Medical Services Disciplinary Committee, established by G.S. 143-519, shall review criminal background information and make a recommendation regarding the eligibility of an individual to obtain initial EMS credentials, renew EMS credentials, or maintain EMS credentials. The Department and the Emergency Medical Services Disciplinary Committee shall keep all information obtained pursuant to this subsection confidential. The Medical Care Commission shall adopt rules to implement the provisions of this subsection, including rules to establish a reasonable fee to offset the actual costs of criminal history information obtained pursuant to G.S. 114-19.18."

SECTION 2. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.18. Criminal record checks of EMS personnel.**

The Department of Justice may provide to the Department of Health and Human Services the criminal history from the State and National Repositories of Criminal Histories of an individual who applies for EMS credentials, seeks to renew EMS credentials, or holds EMS credentials, when the criminal history is requested by the Department. The Department of Health and Human Services shall provide to the Department of Justice the request for the criminal history, the fingerprints of the individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of

fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The Department of Health and Human Services and Emergency Medical Services Disciplinary Committee, established by G.S. 143-519, shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee to offset the costs incurred by it to conduct the checks of criminal history records authorized by this section."

SECTION 3. G.S. 143-519(a) reads as rewritten:

"(a) There is created ~~an~~ the Emergency Medical Services Disciplinary ~~Committee which~~Committee. The Committee shall review and make recommendations to the Department regarding all disciplinary matters relating to credentialing of emergency medical services personnel. At the request of the Department, the Committee shall review criminal background information and make a recommendation regarding the eligibility of an individual to obtain initial EMS credentials, renew EMS credentials, or maintain EMS credentials."

SECTION 4. This act becomes effective July 1, 2007.

HOUSE BILL 535:
Criminal Background Reviews - EMS Personnel

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 2, 2007
Introduced by:	Rep. Wainwright	**Summary by:**	Ben Popkin
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 535 would provide for criminal background reviews of individuals who apply for emergency medical service (EMS) credentials, seek to renew EMS credentials, or hold EMS credentials.***

CURRENT LAW:

Under current law, the Department of Health and Human Services (DHHS) credentials EMS personnel. DHHS may deny, suspend, amend, or revoke the credentials of an EMS worker in any case in which DHHS finds that there has been a substantial failure to comply with the statutes or rules regulating emergency medical services. DHHS rules provide that DHHS may deny, suspend, or revoke the credentials of an EMS worker for any conviction of a felony or a crime involving moral turpitude or scope of practice.

Prior to taking a disciplinary action against an EMS worker, DHHS must consider the recommendations of the EMS Disciplinary Committee. The EMS Disciplinary Committee reviews and makes recommendations to DHHS regarding all disciplinary matters relating to credentialing EMS personnel.

BILL ANALYSIS:

House Bill 535 would provide for criminal background reviews by DHHS of individuals who apply for EMS credentials, seek to renew EMS credentials, or hold EMS credentials. At the request of DHHS, the EMS Disciplinary Committee will review criminal background information and make a recommendation regarding the eligibility of an individual to obtain, renew, or maintain EMS credentials. DHHS and the EMS Disciplinary Committee will keep all criminal background information confidential. The Medical Care Commission will adopt rules to implement the criminal background reviews, including rules to establish a reasonable fee to offset the actual costs of obtaining criminal history information from the Department of Justice (DOJ).

House Bill 535 would authorize DOJ to provide to DHHS the criminal histories from the State and National Repositories of Criminal Histories of individuals who apply for EMS credentials, seek to renew EMS credentials, or hold EMS credentials when the criminal history information is requested by DHHS. DHHS will provide to DOJ the fingerprints of the individual to be checked, additional information required by DOJ, and a form signed by the individual to be checked consenting to the criminal record check and the use of fingerprints and other identifying information. DHHS and the EMS Disciplinary Committee will keep all criminal background information confidential. DOJ shall charge a reasonable fee to offset the cost incurred to conduct the criminal history check.

House Bill 535 would authorize the EMS Disciplinary Committee to, at the request of DHHS, review criminal background information and make recommendations regarding the eligibility of individuals to obtain initial EMS credentials, renew EMS credentials, or maintain EMS credentials

EFFECTIVE DATE: This act becomes effective July 1, 2007.

Jeff Hudson, counsel to House Judiciary II, substantially contributed to this summary. *H0535e3-SMRD*

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. 535 DATE 7/3/07

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Jones

1 moves to amend the bill on page 2, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "July" and substituting
4 the word "October".
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SIGNED Edward Jones

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1322
Committee Substitute Favorable 5/1/07

Short Title: Fire Chiefs Can Request Criminal Histories. (Public)

Sponsors:

Referred to:

April 5, 2007

A BILL TO BE ENTITLED

AN ACT PROVIDING LOCAL FIRE CHIEFS, COUNTY FIRE MARSHALS, AND LOCAL EMERGENCY SERVICES DIRECTORS WITH THE AUTHORITY TO REQUEST CRIMINAL HISTORIES FROM THE DEPARTMENT OF JUSTICE FOR APPLICANTS TO FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES IN UNITS OF LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.12 reads as rewritten:

"**§ 114-19.12. Criminal history record checks of applicants to fire ~~departments.~~departments and emergency medical services.**

(a) Definitions. – As used in this section, the term:

(1) "Applicant" means an applicant for a paid or volunteer position with a fire department in a unit of local government.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20,

Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by a designated local Homeland Security director ~~or,~~a local fire chief, a county fire marshal, or an emergency services director or, when there is no designated local Homeland Security ~~director,~~director, local fire chief, county fire marshal, or emergency services director, by a local law enforcement agency, the North Carolina Department of Justice may provide to the requesting ~~director~~ director, chief, marshal, director, or agency an applicant's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security ~~director~~ director, local fire chief, marshal, director, or local law enforcement agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The local Homeland Security ~~director~~ director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the local Homeland Security ~~director~~ director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the local Homeland Security ~~director~~ director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency receives through the checking of the criminal history is privileged information and for the exclusive use of that director or agency.

(d) If the applicant's verified criminal history record check reveals one or more convictions covered under subdivision (a)(2) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the person from a current position with the local fire ~~department.~~department or emergency

medical services. The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security ~~director~~ director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency in determining whether the position shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and the duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The local fire ~~department~~ department or emergency medical services may deny the applicant the position or dismiss an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from the position.

(f) The local fire ~~department~~ department or emergency medical services may extend a conditional offer of the position pending the results of a criminal history record check authorized by this section.

(g) For purposes of this section, 'local fire chief' shall include only fire chiefs who are paid employees of a city and 'county fire marshal' shall include only fire marshals who are paid employees of a county.

(h) For purposes of this section 'emergency services director' shall include only emergency services directors who are paid employees of a city or county."

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

HOUSE BILL 1322:
Fire Chiefs Can Request Criminal Histories

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 2, 2007
Introduced by:	Reps. Clary, Moore	**Summary by:**	Ben Popkin
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 1322 would authorize local fire chiefs, county fire marshals, and emergency services directors to request criminal histories from the Department of Justice.

CURRENT LAW: G.S. 114-19.12 currently authorizes a designated local Homeland Security director or, when there is not designated local Homeland Security director, a local law enforcement agency to obtain a criminal history from the Department of Justice for and applicant for a paid or volunteer position with a fire department in a unit of local government.

BILL ANALYSIS: House Bill 1322 would authorize local fire chiefs, county fire marshals, and emergency services directors to make the request for a criminal history for applicants to a local fire department or emergency medical services.

For purposes of this section, the term "local fire chief" only includes fire chiefs who are paid employees of a city and "county fire marshal" only includes fire marshals who are paid employees of a county. The term "emergency services director" only includes emergency services directors who are paid employees of a city or county.

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

Susan Sitze, counsel to House Judiciary I, substantially contributed to this summary.

H1322e2-SMRD

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 10, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 445	Access to Information for Adult Adoptees.	Representative Crawford, Jr. Representative Farmer-Butterfield Representative Dickson Representative Wilkins, Jr.
HB 563	Traffic and Personal Safety Changes.-AB	Representative Stiller Representative Sutton
HB 730	Mediation of Property Insurance Claims.-AB	Representative Goforth Representative Holliman
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 1277	Drivers License Revocation for ABC Violation.	Representative Coleman Representative Avila Representative Tillis Representative Harrell
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, July 10, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 445	Access to Information for Adult Adoptees.	Representative Crawford, Jr. Representative Farmer-Butterfield Representative Dickson Representative Wilkins, Jr.
HB 563	Traffic and Personal Safety Changes.-AB	Representative Stiller Representative Sutton
HB 730	Mediation of Property Insurance Claims.-AB	Representative Goforth Representative Holliman
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 1277	Drivers License Revocation for ABC Violation.	Representative Coleman Representative Avila Representative Tillis Representative Harrell
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 10, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on July 10, 2007, with thirteen members present. Senator Hartsell welcomed pages Anne Traister, Kelsey Sabo, Rachel Bradley, Olivia Whitt and Zoe Bennett and thanked them for their service.

HB 535 (Criminal Background Reviews-EMS Personnel.) Senator Hartsell noted that the bill had passed the Committee the previous week and was being recalled for the purpose of a reporting technicality. Senator Jones agreed and moved that the Proposed Committee Substitute be adopted. All voted and the motion carried.

HB 563 (Traffic and Personal Safety Changes.-AB) Senator Hartsell noted there was a Proposed Committee Substitute. Senator Jacumin moved that it be adopted for purposes of discussion. All voted and the motion carried. Representative Sutton was recognized to explain the bill. Questions from Senators Goodall, East, Swindell, Kerr, Bingham, and Jones were answered by Representative Sutton. Mr. Darrell Jernigan from the governor's Office of Highway Patrol and Mr. John Stokes representing the Governors Highway Safety Program spoke on the bill. Ms. Janice McKay, Editor of Bikers USA, and Dr. Thomas Wasileski, of the North Carolina Concerned Bikers Association spoke in opposition to the bill. Senator Berger presented an amendment and moved that it be adopted. All voted and the motion failed. Senator East presented an amendment and moved that it be adopted. All voted and the motion carried. Senator Jacumin moved for a favorable report as amended, unfavorable to the original bill and rolled into a new Committee Substitute. All voted and the motion carried.

HB 445 (Access to Information for Adult Adoptees.) Representative Dickson was recognized to explain the bill. Senator Apodaca moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 10, 2007

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

FAVORABLE

H.B.(CS #1) **445** Access to Information for Adult Adoptees.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **535** Criminal Background Reviews- EMS Personnel.
Draft Number: PCS 50731
Sequential Referral: None
Recommended Referral: Finance
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-10-7

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roberta MacDonald	NC Coalition for Adoption Reform (NCCAR)
David Vaughn	NCCAR
Bonnie Wright	NC CAR
Janine Mackay	WAKE COUNTY Editor of Bikers USA
Doc Sei	NC-BIKE PAC - CBA/ABATE
Sgt. M.L. Brown	NCSHP
Vincent Neumann	NC-BIKEPAC - CBA/ABATE
Andy Ellen	NCDOT
Elizabeth Dalton	NCDOT
Joan W. Lanier	NC CAR (BIRTHMOTHER)
Sandy Cook	Children's Home Society of NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 1-10-7

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Edith Vatta	Children's Home Society of N.C.
Brinton Wright	" "
Gary Sriamiso	GSK
Esther High	DSS
PAUL WADDLE	DSS
	DHHS
Rose Williams	DOI
	CCPS
David Stoller	STATE FARM
Susan Valaure	NW

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-10-7

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joel Faircloth	NCAREMS
Gordon A Joyner	NCAREMS
Tom Vitaglione	NC Child Fatality Task Force
Selena Berrier	NC CFTF
Colleen Kochanek	Smith Moore
Brenda Freeman	DMV
John Stokes	GHSP
Darrell Jernigan	Director GHSP
Herb Garrison	East Carolina University
Fred Boone	Bar Assoc.
Susanne Seeb	NCRLA
Benjamin Ruipus	NCFPC
DGP+S	NCFD

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 2-10-7

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	NAFPC
[illegible]	CAA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 445
Committee Substitute Favorable 5/8/07

Short Title: Access to Information for Adult Adoptees. (Public)

Sponsors:

Referred to:

March 5, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHILD PLACEMENT AGENCIES TO ACT AS CONFIDENTIAL INTERMEDIARIES BETWEEN ADULT ADOPTEES, AN ADULT LINEAL DESCENDANT OF A DECEASED ADOPTEE, AND A BIOLOGICAL PARENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Records~~ Certain terms defined.**

(a) For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age."

SECTION 2. G.S. 48-1-101 is amended by inserting in alphabetical order the following new subdivisions to read:

"In this Chapter, the following definitions apply:

...

(*) 'Confidential intermediary' means a licensed adoption agency staff person who may act as a third party to facilitate contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.

(*) 'Lineal descendant of a deceased adoptee' means any person who descends from the direct line of the adoptee.

...."

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying information.**

(a) Except as provided in ~~G.S. 48-9-109(2),~~G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information. Further, a child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services."

SECTION 4. G.S. 48-9-109 reads as rewritten:

"**§ 48-9-109. Certain disclosures authorized.**

Nothing in this Article shall be interpreted or construed to prevent:

(1) An employee of a court, agency, or any other person from:

a. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this Chapter.

b. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her identity.

c. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.

(2) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or

guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed under G.S. 48-2-305.

(3) The Division from sharing information from its records regarding the identity of birth parents with an agency acting as a confidential intermediary pursuant to G.S. 48-9-104(b), if the information is needed by the agency to carry out its duties as a confidential intermediary. Any information disclosed to the agency pursuant to this subdivision shall not be redisclosed by the agency except as allowed by G.S. 48-9-104(b)."

SECTION 7. This act becomes effective January 1, 2008.

HOUSE BILL 445:
Access to Information for Adult Adoptees

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 10, 2007
Introduced by:	Reps. Dickson, Crawford, Wilkins, Farmer-Butterfield	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	Second Edition		

SUMMARY: ***House Bill H445 authorizes child placement agencies to act as confidential intermediaries between adult adoptees, an adult lineal descendant of a deceased adoptee, and a biological parent.***

BILL ANALYSIS:

Section 1 raises the age of "adult" for the purposes of the records statutes from 18 to 21 years old.

Section 2 defines "confidential intermediary" as a licensed adoption agency staff person who is authorized to facilitate contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the adoptee's biological parent. Also defines "lineal descendant of a deceased adoptee" as any person who descends from the direct line of the adoptee.

Section 3 authorizes a child placing agency or a county department of social services to act as a confidential intermediary between an adult adoptee or an adult lineal descendant of a deceased adoptee and a biological parent of the adoptee. These agencies may share nonidentifying birth family health information. With written consent of both parties the agencies may facilitate contact or share identifying information between the parties.

Also, a child placing agency or a county department of social services may act as a confidential intermediary for the adoptive parents of a minor adoptee to obtain nonidentifying birth family health information.

This section authorizes a confidential intermediary to charge a reasonable fee for their services so long as the fee is pursuant to a written agreement signed by the individual to be charged. The Division of Social Services is required to establish guidelines for confidential intermediary services.

Section 4 makes a conforming change to authorize the Division to release information from its records to a confidential intermediary in order to carry out its duties.

EFFECTIVE DATE: This act becomes effective January 1, 2008.

Susan Sitze,, counsel to House Judiciary I, substantially contributed to this summary.

H0445e2-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 563

Committee Substitute Favorable 4/26/07

Short Title: Traffic and Personal Safety Changes.-AB (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN MOTOR VEHICLE LAW REGARDING THE WEARING OF A SAFETY HELMET BY USE OF A RETENTION STRAP, WHAT "PUBLIC SERVICE VEHICLE" MEANS, CHANGING THE WORD STOPLIGHT TO TRAFFIC SIGNAL, AND CHANGING THE TIME ALLOWED FOR REMOVAL OF A VEHICLE FROM A PUBLIC HIGHWAY OR REST AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-140.4 reads as rewritten:

"**§ 20-140.4. Special provisions for motorcycles and mopeds.**

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

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

(2) Unless the operator and all passengers thereon wear ~~safety helmets of a type approved by the Commissioner of Motor Vehicles.~~on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall be fined according to G.S. 20-135.2A(e) and (f)."

SECTION 2. G.S. 20-157(f) reads as rewritten:

"**§ 20-157. Approach of law enforcement, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near law enforcement, fire department, or rescue squad vehicle or ambulance.**

...

(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that ~~has been called to the scene by a motorist or a law enforcement officer,~~ is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se.

...."

SECTION 3. G.S. 20-158(b) reads as rewritten:

"**§ 20-158. Vehicle control signs and signals.**

...

(b) Control of Vehicles at Intersections. –

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

(2) a. When a ~~steady-beam~~ traffic signal is emitting a steady red circular light controlling traffic approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may make a right turn.

b. Any vehicle that turns right under this subdivision shall yield the right-of-way to:

1. Other traffic and pedestrians using the intersection; and

2. Pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light.

c. Failure to yield to a pedestrian under this subdivision shall be an infraction, and the court may assess a penalty of not more than five hundred dollars ($500.00) and not less than one hundred dollars ($100.00).

d. The Department of Transportation shall collect data regarding the number of individuals who are found responsible for violations of sub-subdivision b. of this subdivision and the number of pedestrians who are involved in accidents at intersections because of a driver's failure to yield the right-of-way while turning right at a red light. The data shall include information regarding the number of disabled pedestrians, including individuals with visual or mobility-related disabilities, who are involved in right turn on red accidents. The Department shall report the data annually to the Joint Legislative Transportation Oversight Committee beginning January 1, 2006.

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

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

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

(5) When a stop sign, ~~stoplight~~traffic signal, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop (i) at an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at

the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

(6) When a traffic signal is not illuminated due to a power outage or other malfunction, vehicles shall approach the intersection and proceed through the intersection as though such intersection is controlled by a stop sign on all approaches to the intersection. This subdivision shall not apply if the movement of traffic at the intersection is being directed by a law enforcement officer, another authorized person, or another type of traffic control device."

SECTION 4. G.S. 20-158(c) reads as rewritten:

"**§ 20-158. Vehicle control signs and signals.**

...

(c) Control of Vehicles at Places other than Intersections. –

(1) When a stop sign has been erected or installed at a place other than an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to pedestrians and other vehicles.

(2) When a ~~stoplight~~traffic signal has been erected or installed at a place other than an intersection, and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the ~~stoplight~~traffic signal is emitting a steady yellow light, vehicles facing the light shall be warned that a red light will be immediately forthcoming and that vehicles may not proceed through such a red light. When the ~~stoplight~~traffic signal is emitting a steady green light, vehicles may proceed subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at a place other than an intersection, approaching vehicles facing the light shall stop and yield the right-of-way to pedestrians or other vehicles.

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

(5) When a ~~stoplight~~traffic signal, stop sign, or other ~~signaling~~ traffic control device authorized by subsection (a) requires a vehicle to stop at a place other than an intersection, the driver shall stop at an appropriately marked stop line, or if none, before entering a marked crosswalk, or if none, before proceeding past the ~~signaling~~ traffic control device.

...."

SECTION 5. G.S. 20-161(e) reads as rewritten:

"**§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.**

...

(e) When any vehicle is parked or left standing upon the right-of-way of a public ~~highway~~ highway, including rest areas, for a period of ~~48~~ 24 hours or more, the owner shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of arranging for the transportation and safe storage of such vehicle and such investigating law-enforcement officer shall be deemed a legal possessor of the motor vehicle within the meaning of that term as it appears in G.S. 44A-2(d).

...."

SECTION 6. G.S. 20-161(f) reads as rewritten:

"**§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.**

...

(f) Any investigating law enforcement officer, with the concurrence of the Department of Transportation, may immediately remove or cause to be removed from ~~a controlled-access highway~~the State highway system any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report. No state or local law enforcement officer, Department of Transportation employee, or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo, or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.

...."

SECTION 7. Section 1 of this act becomes effective January 1, 2008. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 563

Committee Substitute Favorable 4/26/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H563-CSRC-55 [v.4]

7/9/2007 10:21:51 PM

Short Title: Traffic & Personal Safety Changes/Protests. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN MOTOR VEHICLE LAW REGARDING THE WEARING OF A SAFETY HELMET BY USE OF A RETENTION STRAP, WHAT "PUBLIC SERVICE VEHICLE" MEANS, CHANGING THE WORD STOPLIGHT TO TRAFFIC SIGNAL, CHANGING THE TIME ALLOWED FOR REMOVAL OF A VEHICLE FROM A PUBLIC HIGHWAY OR REST AREA, AND AUTHORIZING LOCAL GOVERNMENTS TO ADOPT ORDINANCES REGULATING DEMONSTRATIONS ON STATE ROADS AND HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-140.4 reads as rewritten:

"**§ 20-140.4. Special provisions for motorcycles and mopeds.**

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

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

(2) Unless the operator and all passengers thereon wear ~~safety helmets of a type approved by the Commissioner of Motor Vehicles.~~on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall be fined according to G.S. 20-135.2A(e) and (f)."

SECTION 2. G.S. 20-157(f) reads as rewritten:

"**§ 20-157. Approach of law enforcement, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting**

equipment; parking, etc., near law enforcement, fire department, or rescue squad vehicle or ambulance.

...

(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that ~~has been called to the scene by a motorist or a law enforcement officer,~~ is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se.

...."

SECTION 3. G.S. 20-158(b) reads as rewritten:

"**§ 20-158. Vehicle control signs and signals.**

...

(b) Control of Vehicles at Intersections. –

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

(2) a. When a ~~steady-beam~~ traffic signal is emitting a steady red circular light controlling traffic approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may make a right turn.

b. Any vehicle that turns right under this subdivision shall yield the right-of-way to:
   1. Other traffic and pedestrians using the intersection; and
   2. Pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light.

c. Failure to yield to a pedestrian under this subdivision shall be an infraction, and the court may assess a penalty of not more than five hundred dollars ($500.00) and not less than one hundred dollars ($100.00).

d. The Department of Transportation shall collect data regarding the number of individuals who are found responsible for violations of sub-subdivision b. of this subdivision and the number of pedestrians who are involved in accidents at intersections because of a driver's failure to yield the right-of-way while turning right at a red light. The data shall include information regarding the number of disabled pedestrians, including individuals with visual or mobility-related disabilities, who are involved in right turn on red accidents. The Department shall report the data annually to the Joint Legislative Transportation Oversight Committee beginning January 1, 2006.

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

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

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

(5) When a stop sign, ~~stoplight~~traffic signal, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop (i) at

an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

(6) When a traffic signal is not illuminated due to a power outage or other malfunction, vehicles shall approach the intersection and proceed through the intersection as though such intersection is controlled by a stop sign on all approaches to the intersection. This subdivision shall not apply if the movement of traffic at the intersection is being directed by a law enforcement officer, another authorized person, or another type of traffic control device."

SECTION 4. G.S. 20-158(c) reads as rewritten:

"**§ 20-158. Vehicle control signs and signals.**

...

(c) Control of Vehicles at Places other than Intersections. –

(1) When a stop sign has been erected or installed at a place other than an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to pedestrians and other vehicles.

(2) When a ~~stoplight~~traffic signal has been erected or installed at a place other than an intersection, and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the ~~stoplight~~traffic signal is emitting a steady yellow light, vehicles facing the light shall be warned that a red light will be immediately forthcoming and that vehicles may not proceed through such a red light. When the ~~stoplight~~traffic signal is emitting a steady green light, vehicles may proceed subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

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(5) When a ~~stoplight~~traffic signal, stop sign, or other ~~signaling~~ traffic control device authorized by subsection (a) requires a vehicle to stop at a place other than an intersection, the driver shall stop at an appropriately marked stop line, or if none, before entering a marked crosswalk, or if none, before proceeding past the ~~signaling~~ traffic control device.

...."

SECTION 5. G.S. 20-161(e) reads as rewritten:

"**§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.**

...

(e) When any vehicle is parked or left standing upon the right-of-way of a public ~~highway~~ highway, including rest areas, for a period of ~~48~~ 24 hours or more, the owner shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of arranging for the transportation and safe storage of such vehicle and such investigating law-enforcement officer shall be deemed a legal possessor of the motor vehicle within the meaning of that term as it appears in G.S. 44A-2(d).

...."

SECTION 6. G.S. 20-161(f) reads as rewritten:

"**§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.**

...

(f) Any investigating law enforcement officer, with the concurrence of the Department of Transportation, may immediately remove or cause to be removed from ~~a controlled-access highway~~the State highway system any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report. No state or local law enforcement officer, Department of Transportation employee, or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo, or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.

...."

SECTION 7. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-174.2. Local ordinances; pedestrians gathering, picketing or protesting on roads or highways.**

(a) A municipality or a county may adopt an ordinance regulating the time, place and manner of gatherings, picket lines, or protests by pedestrians that occur on State roadways and State highways.

(b) Nothing in this section shall permit a municipality or a county to impose restrictions or prohibitions on the activities of any of the following persons who are engaged in construction or maintenance, or in making traffic or engineering surveys:

(1) Licensees, employees, or contractors of the Department of Transportation.

(2) Licensees, employees, or contractors of a municipality."

SECTION 8. Section 1 of this act becomes effective January 1, 2008. The remainder of this act is effective when it becomes law.

HOUSE BILL 563:
Traffic and Personal Safety Changes.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 9, 2007
Introduced by:	Reps. Sutton, Stiller	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to Second Edition H563-CSRC-55		

SUMMARY: ***House Bill 563 amends motor vehicle laws concerning motorcycle helmets; the "move over" law; traffic signals; and removal of abandoned vehicles from highways.***

The Proposed Committee Substitute adds a new Section 7 authorizing cities and counties to adopt ordinances regulating the time, place and manner of protests that occur on State roads and State highways.

BILL ANALYSIS: House Bill 563 makes the following changes to the motor vehicle law:

Motorcycle helmets

Section 1 amends the requirement that the operator and any passengers riding a motorcycle or moped must wear a helmet. The bill would require that the helmet meet federal standards, to be worn on the head, and to be worn with a retention strap properly secured. Violation of this requirement would be an infraction and the driver or passenger would be fined $25 and assessed $75 costs of court. No drivers license or insurance surcharge points would be assessed.

"Move –Over" law

Section 2 of the bill amends the "move over" law to clarify that the law applies to all public service vehicles, not just those called the scene by a motorist or a law enforcement officer.

Traffic signal changes

Section 3 of the bill amends the vehicle control signs and signals statute to address situations where traffic signals are inoperable. The proposed language authorizes drivers to proceed as if the intersection was controlled by a 4-way stop sign, unless directed otherwise by a law enforcement officer, another authorized person, or a another type of traffic control device.

Section 4 of the bill updates language in the vehicle control signs and signals statute to replace the word "stoplight" with "traffic signal" and "signaling device" with "traffic control device".

Removal of vehicles left on public highways

Section 5 of the bill shortens, from 48 hours to 24 hours, the amount of time a vehicle may be left on a public highway right-of-way prior to removal. It also clarifies that the term "right-of-way" includes rest areas.

Section 6 of the bill expands the current authorization for law enforcement to remove wrecked or abandoned vehicles from controlled access highways to authorize removal from all State highways.

Regulation of protests on State roads and highways

Section 7 authorizes cities and counties to adopt ordinances regulating the time, place and manner of pedestrian protests on State roads and highways. Cities currently have this authority for municipal streets, but neither cities nor counties have the authority to regulate State roads or highways.

EFFECTIVE DATE: Section 1 becomes effective January 1, 2008. The remainder of the act is effective when it becomes law.

Giles Perry, counsel to House Judiciary III Committee, substantially contributed to this summary.

H0563e2-SMRC-CSRC-55

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 563 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.)
Sen.) Berger

1 moves to amend the bill on page 5, line s 28 - 40

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the lines and by

4 renumbering the remaining

5 sections accordingly.

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SIGNED _____

ADOPTED _____ FAILED X TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 563 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) East
Sen.)

moves to amend the bill on page 1, line 1 & 2

( ) WHICH CHANGES THE TITLE

by deleting the word "THE"

and on page 1, by deleting line 3;

and on page 1, by deleting lines 10-24, and renumbering remaining sections accordingly.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ADVISORY: HEAT STRESS and MOTORCYCLE HELMETS

"...burden on society...hyperthermic brain injury is the third largest killer in the World..."

April 29, 2007, *Janice*, BIKERS USA

In many states, hot weather is here. It certainly is in North Carolina! It is a great time for motorcycle riding, but in the coming months , it will get so hot that you may become irritable. Irritability during hot weather is just one of many signs that you may be suffering a form of heat stress. If you wear a helmet, you should be particularly careful, because helmets are usually made of a non-permeable material which does not allow heat dissipation.

Heat stress is a buildup of body heat generated either internally by muscle use or externally by the environment. Heat exhaustion and heat stroke result when the body is overwhelmed by heat . As the heat increases, body temperature and the heart rate rise painlessly. An increase in body temperature of two degrees Fahrenheit can affect mental functioning. A five degree Fahrenheit increase **can result in serious illness or death**. During hot weather, heat illness may be **an underlying cause of other types of injuries, such as heart attacks, falls and equipment accidents**.

The most serious heat related illness is heat stroke. The symptoms are confusion, irrational behavior, convulsions, coma, and death. While over 20% of heat stroke victims die regardless of health or age, children seem to be more susceptible to heat strain than adults. In some cases, the side effects of heat stroke are **heat sensitivity and varying degrees of brain and kidney damage**.
Source: CDC www.cdc.gov/nasd/docs/d001701-d001800/d001702/d001702.html

BURDEN ON SOCIETY

"In terms of clinical **burden on the society** and number of deaths occurring due to heat illness, **hyperthermic brain injury is the third largest killer in the World** after the cardiovascular and traumatic insults to the central nervous system (CNS). In spite of the seriousness of this problem, studies regarding effects of heat on the CNS are largely ignored."
Source: Indian Journal of Medical Research, May 2005, H.S. Sharma, University Hospital, Uppsala University, Sweden. http://www.icmr.nic.in/ijmr/2005/May/editorial1.pdf

A few years ago, a national television news channel commented that motorcyclists are a "burden on society". This caused a huge uproar, and many motorcyclists, including the author, permanently boycotted their national news. It also fueled the helmet lobby to use the "burden on society" theme to call for a steadfastness refusal to allow bikers to make their own informed decision. Activists for choice now have a medically based "burden on society" response.

BIKERS USA has not yet been able to find a reputable, published medical report related to **Heat Stress and Motorcycle Helmets** but suggests that you think twice before putting that helmet on yourself and your children, in hot weather. You know to **never lock your children or pets in locked cars with windows rolled up**. Similarly, helmets prevent heat from dissipating, and feels the same, particularly if a helmet is black or another dark color. The reduced heat dissipation caused by helmets is especially felt while at a stop, and in slow moving traffic.

Please use this CDC Heat Stress Search for more information and many related publications:
www.cdc.gov/search.do?queryText=heat+stress&searchButton.x=38&searchButton.y=9&action=search

Please spread the word!

BIKERS USA respects your right to wear a helmet, and believes informed riders should be allowed to choose. Check state laws before riding lidless. Always ride sober, safely, and watch out for crazy cagers and suvers.

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HB 563 Traffic and Personal Safety Changes
reviewed in Senate Judiciary II on July 9, 2007

Prepared Statement by Janice MacKay, Wake County, Editor of Bikers USA, 919-342-0403
Time Required: 3 Minutes

Janice MacKay, Wake County, Editor of Bikers USA

I've been riding motorcycles for 40 years. I'm also an authorized reseller of more than 500 models of helmets*. Most of these are full face. Almost all of them are marketed as DOT approved.

According to California Superior Court Judge Barton, the government does not approve helmets, and the phrase "DOT Approved" has no meaning, in fact, or in law.

According to the NHTSA, they have statutory authority to issue standards (FMVSS) for motor vehicle and motor vehicle equipment manufacturers to comply with. NHTSA does not approve any manufacturers or products. DOT or NHTSA does not approve motorcycle helmets, thus, there is no list of "approved" helmets.

What is "DOT Approved" then?

With millions of motorcyclists, and hundreds of models of helmets costing as much as $600, it's definitely a great marketing strategy for big business, but it's NOT a law for consumers or motorcyclists to comply with.

FMVSS 218 is a self-certifying process for helmet manufacturers. Imagine if the FDA did this!

If an average person of reasonable intelligence can't reference the statute and take reasonable steps to ensure compliance, the Constitution says the law is vague and unenforceable.

I want to know how the state will tell the average motorcyclist what FMVSS 218 is.

I also want to know what the state plans to do about the many sub-standard full-face helmets being sold in North Carolina as "DOT approved". This should include the hundreds of full-face helmets which were never tested, or failed testing by the OVSC.

Don't go after me, telling me to figure out what FMVSS 218 is, and to buy helmets that comply with a self-certifying marketing strategy. Go after the helmet makers under Chapter 75!

I propose that HB 563 has many sections which are valid and will serve the citizens. However, paragraph 2 should fail the scrutiny of this Judiciary committee on constitutional grounds. No List No Law. This applies to both the current statute and the proposed statute. Please strike paragraph 2, then vote favorable for the remainder of the bill.

- Since the year 2000, only 158 helmets passed OVSC testing.
- Acronyms:
  FMVSS: Federal Motor Vehicle Safety Standards
  OVSC: Office of Vehicle Safety Compliance
  DOT: Department of Transportation
  NHTSA: National Highway Transportation Administration

HOUSE BILL 563 - TRAFFIC AND PERSONAL SAFETY CHANGES

~

In regards to HB 563 appearing before the NC House Judiciary III Committee on April 26, 2007

In review of amendments proposed within House Bill 563 Traffic and Personal Safety Changes, Section 1a, paragraph 2, related to safety helmets, is vague.

(2) Unless the operator and all passengers thereon wear ~~safety helmets of a type approved by the Commissioner of Motor Vehicles~~on their head, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

In order for a law to be constitutional, an average person of reasonable intelligence, in order to ensure compliance, must be able to answer the following question: What is Federal Motor Vehicle Safety Standard (FMVSS) 218, and how can I ensure that I comply with it?

Whereas, FMVSS 218 is a manufacturing standard understood by engineers, and since FMVSS 218 is not a consumer law, and since law enforcement officers are not capable of roadside testing of safety helmets to ensure compliance,

Then, the average person of reasonable intelligence cannot possibly ensure compliance. Therefore, prior to passage of HB 563 through Judiciary III, please remove the modification of Section 1a paragraph 2, as constitutionally vague.

A review of the current statutes also finds the existing Section 1a paragraph 2 vague.

§ 20-140.4. Special provisions for motorcycles and mopeds.

2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor Vehicles

There is no list of safety helmets approved by the Commissioner of Motor Vehicles. In the absence of such a list, the law is constitutionally vague, and the paragraph should be removed prior to passage of HB 563.

As such, I respectfully hereby propose modification of HB 563 Section 1, as follows:

SECTION 1. G.S. 20-140.4 reads as rewritten:

"§ 20-140.4. Special provisions for motorcycles and mopeds.

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

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

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

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall be fined according to G.S. 20-135.2A(e) and (f)."

If such modification, as proposed herein, is made, striking that portion of the bill which is vague, Section 1a paragraph 2, the remainder of House Bill 563 is agreeable, and should pass Judiciary III committee with no further objection.

As a lawful citizen of North Carolina, and the United States of America, I respectfully request you, all being honorable elected representatives of the people, respond with legislation consistent with the US Constitution.

Sincerely,
a Citizen and Motorcycle Rider

Legislative review and reply provided for the motorcycling community courtesy of BIKERS USA and BOLT of NC, updated April 25, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

HOUSE BILL 730*

Short Title:	Mediation of Property Insurance Claims.-AB	(Public)
Sponsors:	Representatives Goforth, Holliman (Primary Sponsors); and Alexander.	
Referred to:	Insurance.	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CHANGES IN THE LAWS GOVERNING MEDIATION OF PROPERTY INSURANCE CLAIMS ARISING OUT OF DISASTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-44-70 reads as rewritten:

"**§ 58-44-70. Purpose and scope.**

(a) This Part ~~creates~~ provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of ~~a disaster.~~ an event for which there is a state of disaster declared within 60 days of the event. This Part applies only (i) if a state of disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under G.S. 166A-6; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as ~~amended.~~ amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part.

(b) The procedure ~~established~~ authorized by this Part is available to all first-party claimants who have insurance claims resulting from damage to residential property occurring in this State. This Part does not apply to commercial insurance, motor vehicle insurance, or to liability coverage contained in property insurance policies.

(c) The Commissioner may designate a person, either within the Department or outside of the Department, as the Administrator or other functionary to carry out any of the Commissioner's duties under this Part."

SECTION 2. G.S. 58-44-80(b) reads as rewritten:

"(b) The insurer shall mail ~~a~~ the notice ~~of the right to mediate disputed claims~~ described in subsection (a) of this section to an insured within five days after the time the insured or the Administrator notifies the insurer of a dispute regarding the insured's claim. The following apply:

...."

SECTION 3. G.S. 58-44-95 reads as rewritten:

"**§ 58-44-95. Scheduling of mediation; qualification of mediator.**

(a) The Administrator shall select a mediator and schedule the mediation conference.

(b) In order to be approved, a mediator must be certified by the Dispute Resolution Commission under ~~G.S. 7A-38.2; or, if not, shall be approved at the discretion of the Administrator only if the parties agree on the selected mediator and the proposed mediator is a licensed attorney in North Carolina in good standing with the North Carolina State Bar. A mediator shall not make an award or render a judgment as to the merits of the action.~~ G.S. 7A-38.2."

SECTION 4. G.S. 58-44-100 reads as rewritten:

"**§ 58-44-100. Conduct of the mediation conference.**

(a) The Commissioner may adopt rules, in addition to the provisions of this section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for the conduct of mediation conferences under this Part. The rules adopted by the Commissioner shall include a requirement of the mediator to advise the parties of the mediation process and their rights and duties in the process.

~~(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party shall be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, becomes unduly argumentative or adversarial or continuously disrupts or otherwise inhibits the negotiations, as determined by the mediator.~~

(c) The mediator shall terminate the negotiations if the mediator determines that ~~either party is not negotiating in good faith,~~ either party is unable or unwilling to participate meaningfully in the ~~process,~~ process or upon mutual agreement of the parties.

~~(d) The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.~~

(e) The representative of the insurer attending the conference shall:

(1) Bring, in paper or electronic medium, a copy of the policy and the entire claims file to the conference.

(2) Know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

(f) An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle within the limits of the policy.

(g) The mediator shall be in charge of the conference and ~~will~~ shall establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the ~~standards of professional conduct for mediation~~ Standards of Professional Conduct for Mediators adopted by the ~~American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution,~~ Supreme Court of North Carolina and, where not inconsistent, with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2. The Commissioner may refer any matter regarding the conduct of any mediator to the North Carolina Dispute Resolution Commission.

(h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference. If the Commissioner or an employee or designee of the Commissioner attends a settlement conference, the Commissioner, employee, or designee shall not be compelled to testify about what transpired at the settlement conference or about any other matter in connection with the settlement conference.

(i) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known before the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference."

SECTION 5. G.S. 58-44-60(a) reads as rewritten:

"(a) Every insurer that sells residential or commercial property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

"WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES], [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED AND WHAT IS NOT COVERED."

SECTION 6. This act becomes effective October 1, 2007, and applies to policies issued or renewed on or after that date.

HOUSE BILL 730:
Mediation of Property Insurance Claims.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 9, 2007
Introduced by:	Reps. Goforth, Holliman	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 730 is requested by the Department of Insurance to make clarifying and conforming changes to Part 2 of Article 44 of Chapter 58 which deals with the mediation of emergency or disaster-related property insurance claims.***

CURRENT LAW: In 2006, and in response to some of the issues related to property insurance claims in the Gulf Coast area after Hurricane Katrina, the General Assembly passed legislation creating a mediation process for disputed property damage claims resulting from proclaimed disasters. The legislation required that insurers notify insureds of a right to mediate disputed claims.

A disputed claim is defined as any matter where there is a disagreement as to the cause of loss or amount of loss, for which the insurer has denied payment, in part or in whole with respect to claims arising from a disaster. The amount in dispute must be at least $1500, and does not include a denial of coverage for the loss because of exclusions in the policy, terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.

If an insured requests mediation, the Commissioner or the Commissioner's designee (Administrator) shall select a mediator who shall conduct the mediation. The mediation is nonbinding unless all parties specifically agree in writing that the results are binding. If the parties reach a settlement, it shall act as a release of all specific claims that were presented at the mediation conference.

BILL ANALYSIS:

Section 1 amends G.S. 58-44-70 to clarify that a state of disaster may be declared by the General Assembly. It also provides that the mediation procedures of this Part are not triggered unless authorized by the Commissioner of Insurance.

Section 2 amends G.S. 58-44-80(b) to cross reference the notice of right to mediation that is required to be sent by insurers under the preceding subsection. This is a clarification that only one notice to insureds is required.

Section 3 amends G.S. 58-44-95 to provide that only mediators certified by the Dispute Resolution Commission may conduct a mediation conference under this Part.

Section 4 amends G.S. 58-44-100 to remove a requirement that all parties must negotiate in good faith. It also removes the requirement that the party that is responsible for terminating the conference is responsible for paying the mediator's and administrative fees.

Section 5 amends G.S. 58-44-60(a) to clarify that insurers of both residential and commercial property must include in the policy a notice of certain exclusions under the policy.

EFFECTIVE DATE: The act would become effective October 1, 2007 and apply to policies issued or renewed on or after that date.

H0730e1-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 767*

Committee Substitute Favorable 4/5/07

Committee Substitute #2 Favorable 4/18/07

Short Title: ATV Use for Emergencies.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS AND ALL FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO ALLOW CERTAIN MUNICIPAL AND COUNTY EMPLOYEES CURRENTLY AUTHORIZED TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES TO CONTINUE; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers enforcing the laws of the State may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency or under the direct control of the incident commander, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on public highways where the speed limit is 35 miles per hour or less and may operate motorized all-terrain

vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.**

(a) Municipal and county employees may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on public highways where the speed limit is 35 miles per hour or less. Municipal and county employees may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only."

SECTION 3. S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, Section 36 of S.L. 2006-264, and S.L. 2007-4 are repealed.

SECTION 4. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance."

SECTION 5. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 767*

Committee Substitute Favorable 4/5/07

Committee Substitute #2 Favorable 4/18/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H767-CSRI-22 [v.2]

7/9/2007 10:58:03 AM

Short Title: ATV Use for Emergencies.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS AND ALL FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO ALLOW CERTAIN MUNICIPAL AND COUNTY EMPLOYEES CURRENTLY AUTHORIZED TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES TO CONTINUE; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on: (i) public

highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.**

(a) Municipal and county employees may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only."

SECTION 3.(a) S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, Section 36 of S.L. 2006-264, and S.L. 2007-4 are repealed.

SECTION 3.(b) G.S. 20-114.3 is repealed.

SECTION 4. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance. The North Carolina Community College system is authorized to provide all-terrain vehicle safety training, approved by the Commissioner, to persons less than 18 years of age."

SECTION 5. This act becomes effective October 1, 2007.

HOUSE BILL 767:
ATV Use for Emergencies.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 5, 2007
Introduced by:	Rep. Sutton	**Summary by:**	Jennifer McGinnis
Version:	PCS to Third Edition H767-CSRI-22		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 767 would: (i) authorize all law enforcement officers, fire, rescue, and emergency medical personnel, as well as municipal and county employees of listed local governments to operate all-terrain vehicles (ATVs) on specified public highways while acting in the course and scope of their duties; and (ii) require that ATV safety courses be approved by the Commissioner of Insurance, and authorize the North Carolina Community College system to provide such courses.***

[As introduced, this bill was identical to S785, as introduced by Sen. Kerr, which is currently in Senate Judiciary II (Criminal).]

CURRENT LAW: Several local laws, enacted beginning in 2004, authorize law enforcement officers, municipal employees, and county employees to use ATVs on public highways with speeds limits of 35 mph or less, in the course of their duties.

These local laws are exceptions to the general State law, which requires vehicles intended to be operated on the highways of the State to be registered (G.S. 20-50, -52), and provides that operation of a vehicle on the highways of the State without proper registration constitutes a Class 2 misdemeanor (G.S. 20-111).

G.S. 14-159.3(b) defines a motorized all terrain vehicle as "a two or more wheeled vehicle designed for recreational off-road use".

In addition, current State law requires every ATV operator born on or after January 1, 1990 to take a safety course and possess a safety certificate indicating completion of the course.

BILL ANALYSIS: The PCS for House Bill 767 would:

- Authorize **all law enforcement officers** to operate unregistered ATVs owned or leased by the agency or under the direct control of the incident commander, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.
- Authorize **all fire, rescue, and emergency medical personnel** to operate unregistered ATVs owned or leased by the agency, or under the direct control of the incident commander, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.

- Authorize **municipal and county employees only in currently authorized areas** to operate unregistered all-terrain vehicles owned or leased by the agency, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less. This section would apply to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Stanley, Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain and Mount Holly, Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only.
- Specify that the requirements of Part 10C of Article 3 of Chapter 20, Operation of All-Terrain Vehicles, apply to use of ATVs under this bill (age, passenger, brakes, mufflers, spark arrester, eye protection, helmet, DWI, reckless operation, use of headlights).
- Require operable front and rear lights, horn, observation of posted speed limits, and that the operator carry ID. Would prohibit exceeding the manufacturer's recommended speed.
- Provide that a penalty for violation of these new provisions would constitute an infraction.
- Repeal G.S. 20-114.3 (Law enforcement and municipal employee motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.), and all local acts on this subject.
- Require the Commissioner of Insurance to approve required all-terrain vehicle safety courses and authorize the North Carolina Community College system to provide such courses.

EFFECTIVE DATE: This PCS would become effective October 1, 2007.

Giles S. Perry, counsel to House Transportation, substantially contributed to this summary.

H0767e3-SMRI-CSRI-22

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 943

Committee Substitute Favorable 4/10/07

Short Title: Updating of Jury List. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE REGISTRAR TO ASSIST COUNTY JURY COMMISSIONS IN UPDATING THEIR LISTS OF PROSPECTIVE JURORS BY PROVIDING A LIST OF RESIDENTS OF EACH COUNTY WHO HAVE DIED RECENTLY; AND TO EXCLUDE FROM THE LISTS PROVIDED BY THE COMMISSIONER OF MOTOR VEHICLES TO COUNTY JURY COMMISSIONS THE NAMES OF PERSONS WHOSE DRIVERS LICENSES HAVE BEEN EXPIRED FOR AT LEAST EIGHT YEARS AND WHO HAVE BEEN INACTIVE VOTERS FOR AT LEAST FOUR YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2(b) reads as rewritten:

"(b) In preparing the list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121. The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable."

SECTION 2. Article 4 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-121. List of deceased residents for county jury commission.**

The State Registrar shall provide to each county's jury commission an alphabetical list of all residents of that county who have died in the two years prior to July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the county who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the jury commission."

SECTION 3. G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been ~~canceled.~~canceled, except that the list shall not include the name of any formerly licensed driver whose license is expired and has not been renewed for eight years or more. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 4. G.S. 163-82.11(e) reads as rewritten:

"(e) Cooperation on List for Jury Commission. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for four years or more."

SECTION 5. This act becomes effective July 1, 2007.

HOUSE BILL 943:
Updating of Jury List

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 6, 2007
Introduced by:	Rep. Lewis	**Summary by:**	Ben Popkin
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 943 would require the State Registrar to provide county jury commissions with lists of recently deceased residents, and would require jury commissions to remove those deceased residents from their jury lists. The bill would also require the Commissioner of Motor Vehicles and the State Board of Elections to remove drivers whose licenses have been expired for an extended period of time and voters who have been inactive for an extended period of time from the lists provided to county jury commissions.***

CURRENT LAW:

Preparation of jury lists. Each county jury commission is required to prepare a list of prospective jurors on July 1 of every odd-numbered year to serve in the biennium beginning on January 1 of the following year. The commission may instead prepare the jury list annually if requested in writing by the senior regular resident superior court judge. The individuals placed on the jury list come from a list supplied by the Commissioner of Motor Vehicles, which is prepared in cooperation with the State Board of Elections and includes licensed or formerly licensed drivers who are registered voters, licensed or formerly licensed drivers who are not registered voters, and registered voters who are not licensed or formerly licensed drivers.

Records of deaths. For every death that occurs in the State, a death certificate must be filed with the local registrar within five days after the death. The local registrar is required to send original death certificates to the State Registrar on the fifth day of each month, and the State Registrar has the duty of securing and maintaining all vital records in the State.

BILL ANALYSIS: House Bill 943 would require the State Registrar to provide each county jury commission with an alphabetical list of county residents who have died in the two year period prior to July 1 of each odd-numbered year if the jury list in that county is being prepared for the next biennium. The list would have to include residents who have died in the one year period prior to July 1 of each year if the jury list is prepared annually. The bill would require the county jury commission to then remove recently deceased residents from its jury list.

The bill would also require the following people to be excluded from the lists provided to the county jury commissions for use in preparing prospective jury lists:

- Any formerly licensed driver whose license has been expired for eight years or more.
- Any registered voter who has been inactive for four years or more.

EFFECTIVE DATE: The bill would become effective July 1, 2007.

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

H0943e2-SMRD

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 943

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

H943-ARD-13 [v.1]

Date _____,2007

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

Representative _____

moves to amend the bill on page 2, line 34 by deleting the word "July" and substituting the word "October".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1277

Committee Substitute Favorable 4/12/07

Committee Substitute #2 Favorable 5/9/07

Short Title: Drivers License Revocation for ABC Violation. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REVOCATION OF THE DRIVERS LICENSE OF ANY PERSON CONVICTED OF GIVING ALCOHOLIC BEVERAGES TO, OR AIDING AND ABETTING THE PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY, AN UNDERAGE PERSON AND TO ALLOW FOR A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. 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.

(a1) Give. – It shall be unlawful for any person to:

(1) Give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) 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; or

(3) A person less than 21 years old to consume any alcoholic beverage.

(c) Aider and Abettor.

(1) By Underage Person. – Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection

~~(a)~~(a), (a1), or (b) of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age. – Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection ~~(a)~~(a), (a1), or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Defense. – It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(3) Shows that at the time of purchase, the purchaser utilized a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document.

(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this section, by using or attempting to use any of the following:

(1) A fraudulent or altered drivers license.

(2) A fraudulent or altered identification document other than a drivers license.

(3) A drivers license issued to another person.

(4) An identification document other than a drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section.

(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of the person's drivers license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. – The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person

convicted and any other information requested by the Division if the person is convicted ~~of:~~ of any of the following:

(1) A violation of subsection (e) or (f) of this ~~section; or~~ section.

(2) A violation of ~~subdivision (c)(1)~~ subsection (c) of this ~~section; or~~ section.

(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

(4) A violation of subsection (a1) of this section.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. – Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(i) 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)."

SECTION 2. G.S. 18B-302.1(a) reads as rewritten:

"(a) A violation of ~~G.S. 18B-302(a)~~G.S. 18B-302(a) or (a1) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6)."

SECTION 3. G.S. 20-17.3 reads as rewritten:

"**§ 20-17.3. Revocation for underage purchasers of alcohol.**

The Division shall revoke for one year the driver's license of any person who has been convicted of violating any of the following:

(1) ~~G.S. 18B-302(e)(1),~~G.S. 18B-302(c), (e), or ~~(f); or~~ (f).

(2) G.S. 18B–302(b), if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

(3) G.S. 18B-302(a1).

If the person's license is currently suspended or revoked, then the revocation under this section shall begin at the termination of that revocation. A person whose license is revoked under this section for a violation of G.S. 18B-302(a1) or G.S. 18B-302(c) shall be eligible for a limited driving privilege under G.S. 20-179.3."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1277:
Drivers License Revocation for ABC Violation

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 6, 2007
Introduced by:	Reps. T. Harrell, Coleman, Avila, Tillis	**Summary by:**	Ben Popkin
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1277 would require that the Division of Motor Vehicles revoke a person's drivers license for one year when that person has been convicted of giving alcoholic beverages to, or aiding and abetting the purchase or possession of alcohol by, an underage person. The bill would also provide for a limited driving privilege for persons convicted of those offenses.***

CURRENT LAW: G.S. 18B-302 sets out several offenses relating to selling or giving alcoholic beverages to, and the purchase or possession of alcoholic beverages by, and underage person. For some of the offenses, a conviction report is sent to the Division of Motor Vehicles, and upon receipt of the report, the Division is required to revoke the person's license for one year. No provision is made for a limited driving privilege when a license is revoked pursuant to this section.

BILL ANALYSIS: House Bill 1277 would require revocation of a person's drivers license upon conviction of offenses under G.S. 18B-302 that involve giving alcohol to underage persons or aiding and abetting the purchase or possession of alcohol by an underage person. The following chart indicates the offenses under the current law for which a license revocation would be required and the offenses for which a license revocation would be required under this bill:

OFFENSE	CURRENT LAW	Under H1277
Sale of alcohol to underage person	No revocation	No revocation
Give alcohol to underage person	No revocation	Revocation
Purchase/attempt to purchase alcohol by underage person	Revocation	Revocation
Underage person aids and abets selling or giving alcohol to underage person or aids and abets purchase, possession or consumption of alcohol by underage person	Revocation	Revocation
Person of lawful age aids and abets selling or giving alcohol to underage person or aids and abets purchase, possession or consumption of alcohol by underage person	No revocation	Revocation
Fraudulent use of identification to enter a place where alcohol is sold or consumed or to obtain alcohol	Revocation	Revocation
Allowing use of identification by an underage person to purchase, possess, or consume alcohol	Revocation	Revocation

The bill also provides that a person whose license is revoked for being convicted of an offense under G.S. 18B-302 would be eligible for a limited driving privilege if the conviction was for one of the following offenses:

- Giving an alcoholic beverage to an underage person.
- Persons of lawful age aiding and abetting the selling or giving of alcoholic beverages to an underage person or aiding and abetting the purchase, possession, or consumption of alcoholic beverages by an underage person.
- Underage persons aiding and abetting the selling or giving of alcoholic beverages to an underage person or aiding and abetting the purchase, possession, or consumption of alcoholic beverages by an underage person.

EFFECTIVE DATE: The act would become effective December 1, 2007, and would apply to offenses committed on or after that date.

Wendy Graf Ray, counsel to the Transportation Committee, substantially contributed to this summary.

H1277e3-SMRD

HOUSE BILL 1500
Committee Substitute Favorable 5/10/07

Short Title: DNA Evidence/Preserve & Access by Defendant. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEFENDANT ACCESS TO DNA TESTING OF EVIDENCE WHEN CURRENT TESTING PROCEDURES ARE MORE ACCURATE THAN PAST TESTING PROCEDURES, TO AMEND THE LAW GOVERNING THE PRESERVATION AND DISPOSITION OF POSSIBLE DNA EVIDENCE AND POSTCONVICTION DNA TESTING, AND TO PROVIDE A RIGHT OF APPEAL TO A DEFENDANT FOR DENIAL OF A MOTION TO CONDUCT DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-267(c) reads as rewritten:

"(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court may order the SBI to perform DNA testing and DNA Database comparisons of any biological material collected ~~but not DNA tested~~ in connection with the case in which the defendant is charged upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA ~~tested.~~tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense."

SECTION 2. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of ~~samples of~~ biological ~~materials.~~evidence.**

(a) As used in this section, the term 'biological evidence' includes the contents of a sexual assault examination kit; or any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or other evidence.

~~(a)~~(a1)Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity ~~that collects evidence containing DNA in the course of a criminal investigation~~ in custody of evidence shall preserve ~~a sample of the evidence collected for the period of time a defendant convicted of a felony is incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.~~any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), during the period of incarceration and any period of mandatory supervised release.

(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration, any period of mandatory supervised release or probation, and the period of sex offender registration.

(4) For conviction of any felony for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, for a period of seven years.

(b) The governmental entity ~~may dispose of the sample of evidence containing DNA preserved~~ required to preserve evidence pursuant to subsection ~~(a)~~(a1) of this section ~~before the~~ may petition the court for an order allowing for disposition of the evidence prior to the expiration of the period of time described in subsection ~~(a)~~ (a2) of this section if all of the following conditions are met:

(1) The governmental entity sent notice of its intent to dispose of the ~~sample of~~ evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~entity~~ governmental entity to dispose of the ~~sample of~~ evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the ~~current~~ defendant's current counsel of record, the Office of Indigent Defense Services, and the Attorney General. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the governmental entity. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was

assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the governmental entity would destroy the ~~sample of~~ evidence collected in connection with the case unless the governmental entity received a written request that the ~~sample of~~ evidence not be destroyed.

b. The address of the governmental entity where the written request was to be sent.

c. That the written request must be received by the governmental entity within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the material not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file within 180 days of the date of receipt by the defendant of the district attorney's written notification a motion for DNA testing pursuant to G.S. 15A-269, that is followed within 180 days of sending the request that the ~~sample of~~ evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the defendant and agreed to by the governmental entity in possession of the evidence.

(4) The governmental entity did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the governmental entity that intends to dispose of the sample of evidence. The governmental entity may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing, the court may enter an order authorizing the governmental entity to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law;

(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or

(3) May have value for biological analysis but is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.

(e) The court order allowing the disposition of the evidence pursuant to this section may require the governmental entity to take reasonable measures to remove or preserve portions of evidence suitable for future biological testing or may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending."

SECTION 3. G.S. 15A-269(b) reads as rewritten:

"(b) The court shall grant the motion for DNA testing of the evidence upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;~~ and~~

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the ~~defendant.~~defendant; and

(3) The defendant has signed a sworn affidavit of innocence."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal."

SECTION 5. This act becomes effective December 1, 2007.

HOUSE BILL 1500:
DNA Evidence/Preserve & Access by Defendant

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 9, 2007
Introduced by:	Reps. Glazier, Ross	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition H1500-CSRI-21		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1500 would make several changes to the DNA testing laws.

BILL ANALYSIS:

Section 1 amends G.S. 15A-267(c) to allow pre-trial testing of DNA evidence that has previously been tested, but more accurate testing procedures are now available that were not available at the time of previous testing.

Section 2 amends G.S. 15A-268, governing the preservation of biological evidence. A new subsection (a) defines the term "biological evidence" to include not only individual samples of biological material, but also evidence that may contain blood, semen, hair, etc. The evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, and must be subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence. The PCS provides that to the extent a federal standard exists for preservation of biological evidence, the evidence must be preserved in compliance with the standard.

A new subsection (a2) requires the biological evidence to be retained for the following period:

- Death sentence – until execution.
- Violent felony – during incarceration.
- Sex Offense – during incarceration and any period of supervised release or probation.
- Felony convictions allowing DNA samples – 7 years.

G.S. 15A-268 is further amended to require the governmental entity holding the evidence to petition the court to dispose of the evidence earlier than the periods of time provided above. The court may authorize the disposal of the evidence if the court determines by the preponderance of the evidence that the evidence 1) has no significant value for biological analysis, 2) has no significant value for biological analysis and is in some way impractical to retain, or 3) may have value for biological analysis but is in some way impractical to retain. The court may order the governmental entity to take measures to remove or preserve portions of evidence suitable for future testing or may provide the defendant with the opportunity to take those measures. An order regarding disposal of the evidence may be appealed by the defendant within 30 days.

Section 3 amends G.S. 15A-269(b), governing postconviction DNA testing, to require the defendant to sign a sworn affidavit of innocence.

Section 4 creates a new G.S. 15A-270.1 which provides that the defendant may appeal any order denying the defendant's motion for DNA testing, including an interlocutory appeal.

EFFECTIVE DATE: This act becomes effective March 1, 2008.

Susan Sitze, counsel to House Judiciary I, substantially contributed to this summary.

H1500e2-SMRI-CSRI-21

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 12, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 730	Mediation of Property Insurance Claims.-AB	Representative Goforth Representative Holliman
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 1277	Drivers License Revocation for ABC Violation.	Representative Coleman Representative Avila Representative Tillis Representative Harrell
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, July 12, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 730	Mediation of Property Insurance Claims.-AB	Representative Goforth Representative Holliman
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 1277	Drivers License Revocation for ABC Violation.	Representative Coleman Representative Avila Representative Tillis Representative Harrell
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 12, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on July 12, 2007, with thirteen members present. Senator Hartsell introduced pages Becca Thompson, Movah Davis, Lauren Cloninger, Kelsey Sabo, Anne Traister, Thomas Kenna and Olivia Whitt and thanked them for their service.

HB 730 (Mediation of Property Insurance Claims.-AB) Representative Goforth was recognized to explain the bill. Ms. Rose Williams, representing the Department of Insurance, was recognized to give additional explanation. Ms. Williams answered questions from Senators Kerr and Jones. Senator Snow moved for a favorable report. All voted and the motion carried.

HB 767 (ATV Use for Emergencies.-AB) Senator Hartsell noted there was a Proposed Committee Substitute. Senator East moved that it be accepted for purposes of discussion. All voted and the motion carried. Representative Sutton was recognized to explain the bill. He then answered questions from Senators Jones and Kerr. Mr. Gordon Joyner, of the North Carolina Association of Rescue and Emergency Medical Services, Inc., Mr. Tom Vitaglione, Chairman of the North Carolina Child Fatality Task Force and Mr. Joe Stewart of the Insurance Federation of North Carolina spoke on the bill. Senator East moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

HB 1277 (Drivers License Revocation for ABC Violation.) Representative Harrell was recognized to explain the bill. Representatives Avila and Tillis as well as Ms. Theresa Kostrzawa, representing the Distilled Spirits Council of the United States, and Mr. Wayne Goodwin, of the Department of Insurance, spoke in favor of the bill. Senator Berger offered an amendment and moved that it be accepted. All voted and the motion carried. After much discussion, Senator Jacumin moved for a favorable report as amended, rolled into a new Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1500 (DNA Evidence/Preserve & Access by Defendant.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator East so moved, all voted and the motion carried. Representative Glazier was

recognized to explain the bill. Senator Allran presented an amendment and moved that it be accepted. All voted and the motion carried. Due to time constraints, Senator Hartsell noted the bill would be continued at the following meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, July 16, 2007

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

FAVORABLE

H.B. **730** Mediation of Property Insurance Claims.-AB
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **563** Traffic and Personal Safety Changes.-AB
Draft Number: PCS 80465
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) **1277** Drivers License Revocation for ABC Violation.
Draft Number: PCS 50741
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 12, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Vitagliove	Action for Children
Rose Will	DOJ
[signature]	CIA
Gabriella Kostrzewa	2349 Churchill Rd Raleigh, NC 27608
John Mc[illegible]	Gov office
Gordon A-Joyner	NCHRXEMS
Joel Faircloth	NCAREMS
Fred Bone	Bone & Asso
Roger W. Bone	
Susanne Sarles	NCRM
Paula A. Wolf	El Pueblo

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 12 July 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	NFIB
Rev. Mark Creech	Christian Action League
Jami Fitzgerald	NC Family Policy Council
Judy McConnell	JOG
Wayne Yancey	Staff
Steve Woodson	NCFIB
Lao Rubert	CYPC
[illegible]	NCBA
Kevin Daly	ACLU-NC
Adam S. Kuyk	NCGA Staff
Amy McCarley	Smith Anderson

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 12, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Lang	NCDOT
Wayne Goodwin	NCDOT
Elizabeth Dalton	NCRMA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

HOUSE BILL 730*

Short Title:	Mediation of Property Insurance Claims.-AB	(Public)
Sponsors:	Representatives Goforth, Holliman (Primary Sponsors); and Alexander.	
Referred to:	Insurance.	

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CHANGES IN THE LAWS GOVERNING MEDIATION OF PROPERTY INSURANCE CLAIMS ARISING OUT OF DISASTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-44-70 reads as rewritten:

"**§ 58-44-70. Purpose and scope.**

(a) This Part ~~creates~~ provides for a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of ~~a disaster.~~ an event for which there is a state of disaster declared within 60 days of the event. This Part applies only (i) if a state of disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under G.S. 166A-6; or (ii) if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as ~~amended.~~ amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part.

(b) The procedure ~~established~~ authorized by this Part is available to all first-party claimants who have insurance claims resulting from damage to residential property occurring in this State. This Part does not apply to commercial insurance, motor vehicle insurance, or to liability coverage contained in property insurance policies.

(c) The Commissioner may designate a person, either within the Department or outside of the Department, as the Administrator or other functionary to carry out any of the Commissioner's duties under this Part."

SECTION 2. G.S. 58-44-80(b) reads as rewritten:

"(b) The insurer shall mail ~~a~~ the notice ~~of the right to mediate disputed claims~~ described in subsection (a) of this section to an insured within five days after the time the insured or the Administrator notifies the insurer of a dispute regarding the insured's claim. The following apply:

...."

SECTION 3. G.S. 58-44-95 reads as rewritten:

"**§ 58-44-95. Scheduling of mediation; qualification of mediator.**

(a) The Administrator shall select a mediator and schedule the mediation conference.

(b) In order to be approved, a mediator must be certified by the Dispute Resolution Commission under ~~G.S. 7A-38.2; or, if not, shall be approved at the discretion of the Administrator only if the parties agree on the selected mediator and the proposed mediator is a licensed attorney in North Carolina in good standing with the North Carolina State Bar. A mediator shall not make an award or render a judgment as to the merits of the action.~~ G.S. 7A-38.2."

SECTION 4. G.S. 58-44-100 reads as rewritten:

"**§ 58-44-100. Conduct of the mediation conference.**

(a) The Commissioner may adopt rules, in addition to the provisions of this section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for the conduct of mediation conferences under this Part. The rules adopted by the Commissioner shall include a requirement of the mediator to advise the parties of the mediation process and their rights and duties in the process.

~~(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party shall be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, becomes unduly argumentative or adversarial or continuously disrupts or otherwise inhibits the negotiations, as determined by the mediator.~~

(c) The mediator shall terminate the negotiations if the mediator determines that ~~either party is not negotiating in good faith,~~ either party is unable or unwilling to participate meaningfully in the ~~process,~~ process or upon mutual agreement of the parties.

~~(d) The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.~~

(e) The representative of the insurer attending the conference shall:

(1) Bring, in paper or electronic medium, a copy of the policy and the entire claims file to the conference.

(2) Know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

(f) An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle within the limits of the policy.

(g) The mediator shall be in charge of the conference and ~~will~~ shall establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the ~~standards of professional conduct for mediation~~ Standards of Professional Conduct for Mediators adopted by the ~~American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution,~~ Supreme Court of North Carolina and, where not inconsistent, with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2. The Commissioner may refer any matter regarding the conduct of any mediator to the North Carolina Dispute Resolution Commission.

(h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference. If the Commissioner or an employee or designee of the Commissioner attends a settlement conference, the Commissioner, employee, or designee shall not be compelled to testify about what transpired at the settlement conference or about any other matter in connection with the settlement conference.

(i) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known before the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference."

SECTION 5. G.S. 58-44-60(a) reads as rewritten:

"(a) Every insurer that sells residential or commercial property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

"WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES], [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED AND WHAT IS NOT COVERED."

SECTION 6. This act becomes effective October 1, 2007, and applies to policies issued or renewed on or after that date.

HOUSE BILL 730:
Mediation of Property Insurance Claims.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 9, 2007
Introduced by:	Reps. Goforth, Holliman	**Summary by:**	Kory Goldsmith
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 730 is requested by the Department of Insurance to make clarifying and conforming changes to Part 2 of Article 44 of Chapter 58 which deals with the mediation of emergency or disaster-related property insurance claims.

CURRENT LAW: In 2006, and in response to some of the issues related to property insurance claims in the Gulf Coast area after Hurricane Katrina, the General Assembly passed legislation creating a mediation process for disputed property damage claims resulting from proclaimed disasters. The legislation required that insurers notify insureds of a right to mediate disputed claims.

A disputed claim is defined as any matter where there is a disagreement as to the cause of loss or amount of loss, for which the insurer has denied payment, in part or in whole with respect to claims arising from a disaster. The amount in dispute must be at least $1500, and does not include a denial of coverage for the loss because of exclusions in the policy, terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.

If an insured requests mediation, the Commissioner or the Commissioner's designee (Administrator) shall select a mediator who shall conduct the mediation. The mediation is nonbinding unless all parties specifically agree in writing that the results are binding. If the parties reach a settlement, it shall act as a release of all specific claims that were presented at the mediation conference.

BILL ANALYSIS:

Section 1 amends G.S. 58-44-70 to clarify that a state of disaster may be declared by the General Assembly. It also provides that the mediation procedures of this Part are not triggered unless authorized by the Commissioner of Insurance.

Section 2 amends G.S. 58-44-80(b) to cross reference the notice of right to mediation that is required to be sent by insurers under the preceding subsection. This is a clarification that only one notice to insureds is required.

Section 3 amends G.S. 58-44-95 to provide that only mediators certified by the Dispute Resolution Commission may conduct a mediation conference under this Part.

Section 4 amends G.S. 58-44-100 to remove a requirement that all parties must negotiate in good faith. It also removes the requirement that the party that is responsible for terminating the conference is responsible for paying the mediator's and administrative fees.

Section 5 amends G.S. 58-44-60(a) to clarify that insurers of both residential and commercial property must include in the policy a notice of certain exclusions under the policy.

EFFECTIVE DATE: The act would become effective October 1, 2007 and apply to policies issued or renewed on or after that date.

H0730e1-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 767*

Committee Substitute Favorable 4/5/07

Committee Substitute #2 Favorable 4/18/07

Short Title: ATV Use for Emergencies.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS AND ALL FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO ALLOW CERTAIN MUNICIPAL AND COUNTY EMPLOYEES CURRENTLY AUTHORIZED TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES TO CONTINUE; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers enforcing the laws of the State may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency or under the direct control of the incident commander, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on public highways where the speed limit is 35 miles per hour or less and may operate motorized all-terrain

vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.**

(a) Municipal and county employees may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on public highways where the speed limit is 35 miles per hour or less. Municipal and county employees may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only."

SECTION 3. S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, Section 36 of S.L. 2006-264, and S.L. 2007-4 are repealed.

SECTION 4. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance."

SECTION 5. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 767*

Committee Substitute Favorable 4/5/07

Committee Substitute #2 Favorable 4/18/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H767-CSRI-22 [v.2]

7/9/2007 10:58:03 AM

Short Title: ATV Use for Emergencies.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS AND ALL FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO ALLOW CERTAIN MUNICIPAL AND COUNTY EMPLOYEES CURRENTLY AUTHORIZED TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES TO CONTINUE; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on: (i) public

highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.**

(a) Municipal and county employees may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only."

SECTION 3.(a) S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, Section 36 of S.L. 2006-264, and S.L. 2007-4 are repealed.

SECTION 3.(b) G.S. 20-114.3 is repealed.

SECTION 4. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance. The North Carolina Community College system is authorized to provide all-terrain vehicle safety training, approved by the Commissioner, to persons less than 18 years of age."

SECTION 5. This act becomes effective October 1, 2007.

HOUSE BILL 767:
ATV Use for Emergencies.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 5, 2007
Introduced by:	Rep. Sutton	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to Third Edition H767-CSRI-22		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 767 would: (i) authorize all law enforcement officers, fire, rescue, and emergency medical personnel, as well as municipal and county employees of listed local governments to operate all-terrain vehicles (ATVs) on specified public highways while acting in the course and scope of their duties; and (ii) require that ATV safety courses be approved by the Commissioner of Insurance, and authorize the North Carolina Community College system to provide such courses.***

[As introduced, this bill was identical to S785, as introduced by Sen. Kerr, which is currently in Senate Judiciary II (Criminal).]

CURRENT LAW: Several local laws, enacted beginning in 2004, authorize law enforcement officers, municipal employees, and county employees to use ATVs on public highways with speeds limits of 35 mph or less, in the course of their duties.

These local laws are exceptions to the general State law, which requires vehicles intended to be operated on the highways of the State to be registered (G.S. 20-50, -52), and provides that operation of a vehicle on the highways of the State without proper registration constitutes a Class 2 misdemeanor (G.S. 20-111).

G.S. 14-159.3(b) defines a motorized all terrain vehicle as "a two or more wheeled vehicle designed for recreational off-road use".

In addition, current State law requires every ATV operator born on or after January 1, 1990 to take a safety course and possess a safety certificate indicating completion of the course.

BILL ANALYSIS: The PCS for House Bill 767 would:

- Authorize **all law enforcement officers** to operate unregistered ATVs owned or leased by the agency or under the direct control of the incident commander, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.
- Authorize **all fire, rescue, and emergency medical personnel** to operate unregistered ATVs owned or leased by the agency, or under the direct control of the incident commander, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.

- Authorize **municipal and county employees only in currently authorized areas** to operate unregistered all-terrain vehicles owned or leased by the agency, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less. This section would apply to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Stanley, Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain and Mount Holly, Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only.
- Specify that the requirements of Part 10C of Article 3 of Chapter 20, Operation of All-Terrain Vehicles, apply to use of ATVs under this bill (age, passenger, brakes, mufflers, spark arrester, eye protection, helmet, DWI, reckless operation, use of headlights).
- Require operable front and rear lights, horn, observation of posted speed limits, and that the operator carry ID. Would prohibit exceeding the manufacturer's recommended speed.
- Provide that a penalty for violation of these new provisions would constitute an infraction.
- Repeal G.S. 20-114.3 (Law enforcement and municipal employee motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.), and all local acts on this subject.
- Require the Commissioner of Insurance to approve required all-terrain vehicle safety courses and authorize the North Carolina Community College system to provide such courses.

EFFECTIVE DATE: This PCS would become effective October 1, 2007.

Giles S. Perry, counsel to House Transportation, substantially contributed to this summary.

H0767e3-SMRI-CSRI-22

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1277

Committee Substitute Favorable 4/12/07
Committee Substitute #2 Favorable 5/9/07

Short Title: Drivers License Revocation for ABC Violation. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REVOCATION OF THE DRIVERS LICENSE OF ANY PERSON CONVICTED OF GIVING ALCOHOLIC BEVERAGES TO, OR AIDING AND ABETTING THE PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY, AN UNDERAGE PERSON AND TO ALLOW FOR A LIMITED DRIVING PRIVILEGE.

The General Assembly of North Carolina enacts:

SECTION 1. 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.

(a1) Give. – It shall be unlawful for any person to:

(1) Give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) 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; or

(3) A person less than 21 years old to consume any alcoholic beverage.

(c) Aider and Abettor.

(1) By Underage Person. – Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection

~~(a)~~(a), (a1), or (b) of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age. – Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection ~~(a)~~(a), (a1), or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Defense. – It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(3) Shows that at the time of purchase, the purchaser utilized a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document.

(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this section, by using or attempting to use any of the following:

(1) A fraudulent or altered drivers license.

(2) A fraudulent or altered identification document other than a drivers license.

(3) A drivers license issued to another person.

(4) An identification document other than a drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section.

(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of the person's drivers license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. – The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person

convicted and any other information requested by the Division if the person is convicted ~~of:~~ of any of the following:

(1) A violation of subsection (e) or (f) of this ~~section; or~~ section.

(2) A violation of ~~subdivision (c)(1)~~ subsection (c) of this ~~section; or~~ section.

(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

(4) A violation of subsection (a1) of this section.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. – Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(i) 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)."

SECTION 2. G.S. 18B-302.1(a) reads as rewritten:

"(a) A violation of ~~G.S. 18B-302(a)~~G.S. 18B-302(a) or (a1) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6)."

SECTION 3. G.S. 20-17.3 reads as rewritten:

"**§ 20-17.3. Revocation for underage purchasers of alcohol.**

The Division shall revoke for one year the driver's license of any person who has been convicted of violating any of the following:

(1) ~~G.S. 18B-302(c)(1),~~G.S. 18B-302(c), (e), or ~~(f); or~~ (f).

(2) G.S. 18B–302(b), if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

(3) G.S. 18B-302(a1).

If the person's license is currently suspended or revoked, then the revocation under this section shall begin at the termination of that revocation. A person whose license is revoked under this section for a violation of G.S. 18B-302(a1) or G.S. 18B-302(c) shall be eligible for a limited driving privilege under G.S. 20-179.3."

SECTION 4. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

HOUSE BILL 1277:
Drivers License Revocation for ABC Violation

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 6, 2007
Introduced by:	Reps. T. Harrell, Coleman, Avila, Tillis	**Summary by:**	Ben Popkin
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1277 would require that the Division of Motor Vehicles revoke a person's drivers license for one year when that person has been convicted of giving alcoholic beverages to, or aiding and abetting the purchase or possession of alcohol by, an underage person. The bill would also provide for a limited driving privilege for persons convicted of those offenses.***

CURRENT LAW: G.S. 18B-302 sets out several offenses relating to selling or giving alcoholic beverages to, and the purchase or possession of alcoholic beverages by, and underage person. For some of the offenses, a conviction report is sent to the Division of Motor Vehicles, and upon receipt of the report, the Division is required to revoke the person's license for one year. No provision is made for a limited driving privilege when a license is revoked pursuant to this section.

BILL ANALYSIS: House Bill 1277 would require revocation of a person's drivers license upon conviction of offenses under G.S. 18B-302 that involve giving alcohol to underage persons or aiding and abetting the purchase or possession of alcohol by an underage person. The following chart indicates the offenses under the current law for which a license revocation would be required and the offenses for which a license revocation would be required under this bill:

OFFENSE	CURRENT LAW	Under H1277
Sale of alcohol to underage person	No revocation	No revocation
Give alcohol to underage person	No revocation	Revocation
Purchase/attempt to purchase alcohol by underage person	Revocation	Revocation
Underage person aids and abets selling or giving alcohol to underage person or aids and abets purchase, possession or consumption of alcohol by underage person	Revocation	Revocation
Person of lawful age aids and abets selling or giving alcohol to underage person or aids and abets purchase, possession or consumption of alcohol by underage person	No revocation	Revocation
Fraudulent use of identification to enter a place where alcohol is sold or consumed or to obtain alcohol	Revocation	Revocation
Allowing use of identification by an underage person to purchase, possess, or consume alcohol	Revocation	Revocation

The bill also provides that a person whose license is revoked for being convicted of an offense under G.S. 18B-302 would be eligible for a limited driving privilege if the conviction was for one of the following offenses:

- Giving an alcoholic beverage to an underage person.
- Persons of lawful age aiding and abetting the selling or giving of alcoholic beverages to an underage person or aiding and abetting the purchase, possession, or consumption of alcoholic beverages by an underage person.
- Underage persons aiding and abetting the selling or giving of alcoholic beverages to an underage person or aiding and abetting the purchase, possession, or consumption of alcoholic beverages by an underage person.

EFFECTIVE DATE: The act would become effective December 1, 2007, and would apply to offenses committed on or after that date.

Wendy Graf Ray, counsel to the Transportation Committee, substantially contributed to this summary.

H1277e3-SMRD

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1277 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Berger
Sen.)

moves to amend the bill on page 3, line 44

( ) WHICH CHANGES THE TITLE

by adding after the period and before the quotation:

"Conviction for a violation of G.S. 18B-302(a1) shall not result in the assessment of insurance points."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1500

Committee Substitute Favorable 5/10/07

Short Title: DNA Evidence/Preserve & Access by Defendant. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEFENDANT ACCESS TO DNA TESTING OF EVIDENCE WHEN CURRENT TESTING PROCEDURES ARE MORE ACCURATE THAN PAST TESTING PROCEDURES, TO AMEND THE LAW GOVERNING THE PRESERVATION AND DISPOSITION OF POSSIBLE DNA EVIDENCE AND POSTCONVICTION DNA TESTING, AND TO PROVIDE A RIGHT OF APPEAL TO A DEFENDANT FOR DENIAL OF A MOTION TO CONDUCT DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-267(c) reads as rewritten:

"(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court may order the SBI to perform DNA testing and DNA Database comparisons of any biological material collected ~~but not DNA tested~~ in connection with the case in which the defendant is charged upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA ~~tested.~~tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense."

SECTION 2. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of ~~samples of~~ biological ~~materials.~~evidence.**

(a) As used in this section, the term 'biological evidence' includes the contents of a sexual assault examination kit; or any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or other evidence.

~~(a)~~(a1)Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity ~~that collects evidence containing DNA in the course of a criminal investigation~~ in custody of evidence shall preserve ~~a sample of the evidence collected for the period of time a defendant convicted of a felony is incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.~~any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), during the period of incarceration and any period of mandatory supervised release.

(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration, any period of mandatory supervised release or probation, and the period of sex offender registration.

(4) For conviction of any felony for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, for a period of seven years.

(b) The governmental entity ~~may dispose of the sample of evidence containing DNA preserved~~ required to preserve evidence pursuant to subsection ~~(a)~~(a1) of this section ~~before the~~ may petition the court for an order allowing for disposition of the evidence prior to the expiration of the period of time described in subsection ~~(a)~~ (a2) of this section if all of the following conditions are met:

(1) The governmental entity sent notice of its intent to dispose of the ~~sample of~~ evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~entity~~ governmental entity to dispose of the ~~sample of~~ evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the ~~current~~ defendant's current counsel of record, the Office of Indigent Defense Services, and the Attorney General. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the governmental entity. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was

assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the governmental entity would destroy the ~~sample of~~ evidence collected in connection with the case unless the governmental entity received a written request that the ~~sample of~~ evidence not be destroyed.

b. The address of the governmental entity where the written request was to be sent.

c. That the written request must be received by the governmental entity within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the material not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file within 180 days of the date of receipt by the defendant of the district attorney's written notification a motion for DNA testing pursuant to G.S. 15A-269, that is followed within 180 days of sending the request that the ~~sample of~~ evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the defendant and agreed to by the governmental entity in possession of the evidence.

(4) The governmental entity did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the governmental entity that intends to dispose of the sample of evidence. The governmental entity may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing, the court may enter an order authorizing the governmental entity to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law;

(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or

(3) May have value for biological analysis but is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.

(e) The court order allowing the disposition of the evidence pursuant to this section may require the governmental entity to take reasonable measures to remove or preserve portions of evidence suitable for future biological testing or may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending."

SECTION 3. G.S. 15A-269(b) reads as rewritten:

"(b) The court shall grant the motion for DNA testing of the evidence upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met; ~~and~~

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the ~~defendant.~~defendant; and

(3) The defendant has signed a sworn affidavit of innocence."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal."

SECTION 5. This act becomes effective December 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1500

Committee Substitute Favorable 5/10/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1500-CSRI-21 [v.8]

7/11/2007 5:34:04 PM

Short Title: DNA Evidence/Preserve & Access by Defendant. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEFENDANT ACCESS TO DNA TESTING OF EVIDENCE WHEN CURRENT TESTING PROCEDURES ARE MORE ACCURATE THAN PAST TESTING PROCEDURES, TO AMEND THE LAW GOVERNING THE PRESERVATION AND DISPOSITION OF POSSIBLE DNA EVIDENCE AND POSTCONVICTION DNA TESTING, AND TO PROVIDE A RIGHT OF APPEAL TO A DEFENDANT FOR DENIAL OF A MOTION TO CONDUCT DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-267(c) reads as rewritten:

"(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court may order the SBI to perform DNA testing and DNA Database comparisons of any biological material collected ~~but not DNA tested~~ in connection with the case in which the defendant is charged upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA ~~tested.~~tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense."

SECTION 2. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of ~~samples of~~ biological ~~materials.~~evidence.**

(a) As used in this section, the term 'biological evidence' includes the contents of a sexual assault examination kit; or any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present

on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or other evidence.

~~(a)~~(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity ~~that collects evidence containing DNA in the course of a criminal investigation~~ in custody of evidence shall preserve ~~a sample of the evidence collected for the period of time a defendant convicted of a felony is incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.~~ any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) Except in cases where the convicted person entered and was convicted on a plea of guilty, the evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), during the period of incarceration.

(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration and any period of mandatory supervised release or probation.

(4) For conviction of any felony, other than those felonies described in subdivision (2) of this subsection, for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, for a period of seven years from the date of conviction.

(a3) In cases where a person convicted of any felony entered and was convicted on a plea of guilty, the evidence described by subsection (a1) of this section shall be preserved for three years from the date of conviction.

(b) The governmental entity ~~may dispose of the sample of evidence containing DNA preserved~~ required to preserve evidence pursuant to subsection ~~(a)~~(a1) of this section ~~before the~~ may petition the court for an order allowing for disposition of the evidence prior to the expiration of the period of time described in ~~subsection (a)~~ subsections (a2) and (a3) of this section if all of the following conditions are met:

(1) The governmental entity sent notice of its intent to dispose of the ~~sample of~~ evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~entity~~ governmental entity to dispose of the ~~sample of~~ evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the ~~current~~

defendant's current counsel of record, the Office of Indigent Defense Services, and the Attorney General. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the governmental entity. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the governmental entity would destroy the ~~sample of~~ evidence collected in connection with the case unless the governmental entity received a written request that the ~~sample of~~ evidence not be destroyed.

b. The address of the governmental entity where the written request was to be sent.

c. That the written request must be received by the governmental entity within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the material not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file within 180 days of the date of receipt by the defendant of the district attorney's written notification a motion for DNA testing pursuant to G.S. 15A-269, that is followed within 180 days of sending the request that the ~~sample of~~ evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the defendant and agreed to by the governmental entity in possession of the evidence.

(4) The governmental entity did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection

indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the governmental entity that intends to dispose of the sample of evidence. The governmental entity may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing, the court may enter an order authorizing the governmental entity to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law;

(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or

(3) May have value for biological analysis but is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.

(e) The court order allowing the disposition of the evidence pursuant to this section may require the governmental entity to take reasonable measures to remove or preserve portions of evidence suitable for future biological testing or may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending."

SECTION 3. G.S. 15A-269(b) reads as rewritten:

"(b) The court shall grant the motion for DNA testing of the evidence upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met; ~~and~~

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the ~~defendant.~~defendant; and

(3) The defendant has signed a sworn affidavit of innocence."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal."

SECTION 5. This act becomes effective March 1, 2008.

HOUSE BILL 1500:
DNA Evidence/Preserve & Access by Defendant

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 11, 2007
Introduced by:	Reps. Glazier, Ross	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition H1500-CSRI-21 [v.8]		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1500 would make several changes to the DNA testing laws.

BILL ANALYSIS:

Section 1 amends G.S. 15A-267(c) to allow pre-trial testing of DNA evidence that has previously been tested, but more accurate testing procedures are now available that were not available at the time of previous testing.

Section 2 amends G.S. 15A-268, governing the preservation of biological evidence. A new subsection (a) defines the term "biological evidence" to include not only individual samples of biological material, but also evidence that may contain blood, semen, hair, etc. The evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, and must be subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence.

The PCS would require that biological evidence be retained as follows:

- Felony conviction based on a plea of guilty – 3 years from the date of conviction.
- Death sentence – until execution.*
- Violent felony – during incarceration.*
- Sex Offense – during incarceration and any period of supervised release or probation.*
- Felony convictions allowing DNA samples – 7 years from the date of conviction.*

G.S. 15A-268 is further amended to require the governmental entity holding the evidence to petition the court to dispose of the evidence earlier than the periods of time provided above. The court may authorize the disposal of the evidence if the court determines by the preponderance of the evidence that the evidence 1) has no significant value for biological analysis, 2) has no significant value for biological analysis and is in some way impractical to retain, or 3) may have value for biological analysis but is in some way impractical to retain. The court may order the governmental entity to take measures to remove or preserve portions of evidence suitable for future testing or may provide the defendant with the opportunity to take those measures. An order regarding disposal of the evidence may be appealed by the defendant within 30 days.

Section 3 amends G.S. 15A-269(b), governing postconviction DNA testing, to require the defendant to sign a sworn affidavit of innocence.

Section 4 creates a new G.S. 15A-270.1 which provides that the defendant may appeal any order denying the defendant's motion for DNA testing, including an interlocutory appeal.

*Retention period does not apply to cases where the convicted person entered and was convicted on a **plea of guilty**.

EFFECTIVE DATE: This act becomes effective March 1, 2008.

Susan Sitze, counsel to House Judiciary I, substantially contributed to this summary.

H1500e2-SMRI-CSRI-21 v8

68365 SHIELDS BUSINESS FORMS, RALEIGH, NC 27605

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

P1

EDITION No. _____

H. B. No. 1500 DATE 7/12/07

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

COMMITTEE SUBSTITUTE #1500-CSR1-21 [v8]

Rep. G

Sen.)

moves to amend the bill on page 2, lines 15-16

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"(a2) The evidence described in by subsection (a1) of this section shall be"; and

on p. 2, line 19, by rewriting that line to read:

"(2) except in cases where the convicted person entered and was convicted on a plea of guilty for conviction of a violent felony, as defined in G.S. 14-7.7(b), during the period of incarceration. In cases where the person convicted of a violent felony was to entered and was convicted on a plea of guilty, the evidence described by subsection

SIGNED _____

ADOPTED FAILED TABLED

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

P. 2

EDITION No. _____

H. B. No. 1500 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page _____, line _____

( ) WHICH CHANGES THE TITLE

by _____

of this section shall be preserved for three years."; and

~~or~~ on p. 2 lines 30 through 32 by deleting these lines; and

on p. 2 line 37 by deleting the phrase "subsections (a2) and (a3)" and substituting the phrase "subsection (a2)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 17, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier
HB 943	Updating of Jury List.	Representative Lewis
HB 1810	VAWA 2005 Compliance.	Representative Ross

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, July 17, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 943	Updating of Jury List.	Representative Lewis
HB 1500	DNA Evidence/Preserve & Access by Defendant.	Representative Ross Representative Glazier
HB 1810	VAWA 2005 Compliance.	Representative Ross

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 17, 2007

Senator Jones, Vice Chairman, called the Senate Judiciary II Committee to order on July 17, 2007, with twelve members present. Senator Jones introduced pages Andrew Rowland, Coleman Cox, Allie Rawl, John Rose, Brice Hamby, David Richardson and Alex White and thanked them for their service.

Senator Jones noted that HB 943 would not be heard today.

HB 1500 (DNA Evidence/Preserve & Access by Defendant.) Senator Jones asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator East so moved and the motion carried. Representative Glazier was recognized to explain the bill. He then answered questions from Senators Berger, East, Kerr, Apodaca and Bingham. Senator Snow moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

HB 1810 (VAWA 2005 Compliance.) Representative Ross was recognized to explain the bill. She then answered questions from Senators East and Bingham. Senator Dorsett moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Tuesday, July 17, 2007

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

FAVORABLE

H.B.(CS #1) **1810** VAWA 2005 Compliance.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 17, 2007

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

FAVORABLE

H.B.(CS #1) **1810** VAWA 2005 Compliance.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **767** ATV Use for Emergencies.-AB
Draft Number: PCS 70585
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, July 18, 2007

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1500** DNA Evidence/Preserve & Access by Defendant.

Draft Number:	PCS 80467
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-17-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Kimbrough	NCCASA
Kevin Daly	ACLU-NC
Penny Griffin	Daily Bulletin
Anita Lucier Barwick	NC Conf. of DAs
Bill Wilson	AARP
Todd Below	NCAJC
Barbara Moore	NC Conf. of Clerks of Sup Ct.
Beth Fraccaro	NCCADV
Will Polk	NC Office of Lt. Gov.
Jon Williams	CCPS
David Jones	CCPS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-17-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lorrin Freeman	Wake Co. CSC
Christine Mumma	NC Coalition Actual Innocence
Ellie Caldwell	NC Sheriffs' Assn.
TeAndra Miller	Legal Aid of N.C.
Jasmine Miller	" "

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 943

Committee Substitute Favorable 4/10/07

Short Title: Updating of Jury List. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE REGISTRAR TO ASSIST COUNTY JURY COMMISSIONS IN UPDATING THEIR LISTS OF PROSPECTIVE JURORS BY PROVIDING A LIST OF RESIDENTS OF EACH COUNTY WHO HAVE DIED RECENTLY; AND TO EXCLUDE FROM THE LISTS PROVIDED BY THE COMMISSIONER OF MOTOR VEHICLES TO COUNTY JURY COMMISSIONS THE NAMES OF PERSONS WHOSE DRIVERS LICENSES HAVE BEEN EXPIRED FOR AT LEAST EIGHT YEARS AND WHO HAVE BEEN INACTIVE VOTERS FOR AT LEAST FOUR YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2(b) reads as rewritten:

"(b) In preparing the list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121. The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable."

SECTION 2. Article 4 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-121. List of deceased residents for county jury commission.**

The State Registrar shall provide to each county's jury commission an alphabetical list of all residents of that county who have died in the two years prior to July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the county who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the jury commission."

SECTION 3. G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been ~~canceled.~~canceled, except that the list shall not include the name of any formerly licensed driver whose license is expired and has not been renewed for eight years or more. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 4. G.S. 163-82.11(e) reads as rewritten:

"(e) Cooperation on List for Jury Commission. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for four years or more."

SECTION 5. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1500

Committee Substitute Favorable 5/10/07

Short Title: DNA Evidence/Preserve & Access by Defendant. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEFENDANT ACCESS TO DNA TESTING OF EVIDENCE WHEN CURRENT TESTING PROCEDURES ARE MORE ACCURATE THAN PAST TESTING PROCEDURES, TO AMEND THE LAW GOVERNING THE PRESERVATION AND DISPOSITION OF POSSIBLE DNA EVIDENCE AND POSTCONVICTION DNA TESTING, AND TO PROVIDE A RIGHT OF APPEAL TO A DEFENDANT FOR DENIAL OF A MOTION TO CONDUCT DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-267(c) reads as rewritten:

"(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court may order the SBI to perform DNA testing and DNA Database comparisons of any biological material collected ~~but not DNA tested~~ in connection with the case in which the defendant is charged upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA ~~tested.~~tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense."

SECTION 2. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of ~~samples of~~ biological ~~materials.~~evidence.**

(a) As used in this section, the term 'biological evidence' includes the contents of a sexual assault examination kit; or any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or other evidence.

~~(a)~~(a1)Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity ~~that collects evidence containing DNA in the course of a criminal investigation~~ in custody of evidence shall preserve ~~a sample of the evidence collected for the period of time a defendant convicted of a felony is incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.~~any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), during the period of incarceration and any period of mandatory supervised release.

(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration, any period of mandatory supervised release or probation, and the period of sex offender registration.

(4) For conviction of any felony for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, for a period of seven years.

(b) The governmental entity ~~may dispose of the sample of evidence containing DNA preserved~~ required to preserve evidence pursuant to subsection ~~(a)~~(a1) of this section ~~before the~~ may petition the court for an order allowing for disposition of the evidence prior to the expiration of the period of time described in subsection ~~(a)~~ (a2) of this section if all of the following conditions are met:

(1) The governmental entity sent notice of its intent to dispose of the ~~sample of~~ evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~entity~~ governmental entity to dispose of the ~~sample of~~ evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the ~~current~~ defendant's current counsel of record, the Office of Indigent Defense Services, and the Attorney General. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the governmental entity. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was

assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the governmental entity would destroy the ~~sample of~~ evidence collected in connection with the case unless the governmental entity received a written request that the ~~sample of~~ evidence not be destroyed.

b. The address of the governmental entity where the written request was to be sent.

c. That the written request must be received by the governmental entity within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the material not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file within 180 days of the date of receipt by the defendant of the district attorney's written notification a motion for DNA testing pursuant to G.S. 15A-269, that is followed within 180 days of sending the request that the ~~sample of~~ evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the defendant and agreed to by the governmental entity in possession of the evidence.

(4) The governmental entity did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the governmental entity that intends to dispose of the sample of evidence. The governmental entity may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing, the court may enter an order authorizing the governmental entity to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law;

(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or

(3) May have value for biological analysis but is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.

(e) The court order allowing the disposition of the evidence pursuant to this section may require the governmental entity to take reasonable measures to remove or preserve portions of evidence suitable for future biological testing or may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending."

SECTION 3. G.S. 15A-269(b) reads as rewritten:

"(b) The court shall grant the motion for DNA testing of the evidence upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met; ~~and~~

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the ~~defendant.~~defendant; and

(3) The defendant has signed a sworn affidavit of innocence."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal."

SECTION 5. This act becomes effective December 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1500

Committee Substitute Favorable 5/10/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1500-CSRI-21 [v.13]

7/16/2007 10:31:53 AM

Short Title: DNA Evidence/Preserve & Access by Defendant. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEFENDANT ACCESS TO DNA TESTING OF EVIDENCE WHEN CURRENT TESTING PROCEDURES ARE MORE ACCURATE THAN PAST TESTING PROCEDURES, TO AMEND THE LAW GOVERNING THE PRESERVATION AND DISPOSITION OF POSSIBLE DNA EVIDENCE AND POSTCONVICTION DNA TESTING, AND TO PROVIDE A RIGHT OF APPEAL TO A DEFENDANT FOR DENIAL OF A MOTION TO CONDUCT DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-267(c) reads as rewritten:

"(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court may order the SBI to perform DNA testing and DNA Database comparisons of any biological material collected ~~but not DNA tested~~ in connection with the case in which the defendant is charged upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA ~~tested.~~tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense."

SECTION 2. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of ~~samples of~~ biological ~~materials.~~evidence.**

(a) As used in this section, the term 'biological evidence' includes the contents of a sexual assault examination kit; or any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present

on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or other evidence.

~~(a)~~(a1)Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity ~~that collects evidence containing DNA in the course of a criminal investigation~~ in custody of evidence shall preserve ~~a sample of the evidence collected for the period of time a defendant convicted of a felony is incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.~~any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), the evidence shall be preserved during the period of incarceration except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.

(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration and any period of mandatory supervised release or probation.

(4) For conviction of any felony not governed by subdivisions (1), (2), or (3) of this subsection for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, the evidence shall be preserved for a period of seven years from the date of conviction except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.

(b) The governmental entity ~~may dispose of the sample of evidence containing DNA preserved~~ required to preserve evidence pursuant to subsection ~~(a)~~(a1) of this section ~~before the~~ may petition the court for an order allowing for disposition of the evidence prior to the expiration of the period of time described in ~~subsection (a)~~ subsection (a2) of this section if all of the following conditions are met:

(1) The governmental entity sent notice of its intent to dispose of the ~~sample of~~ evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~entity~~ governmental entity to dispose of the ~~sample of~~ evidence: any defendant convicted of a felony who is

currently incarcerated in connection with the case, the ~~current~~ defendant's current counsel of record, the Office of Indigent Defense Services, and the Attorney General. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the governmental entity. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the governmental entity would destroy the ~~sample of~~ evidence collected in connection with the case unless the governmental entity received a written request that the ~~sample of~~ evidence not be destroyed.

b. The address of the governmental entity where the written request was to be sent.

c. That the written request must be received by the governmental entity within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the material not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file within 180 days of the date of receipt by the defendant of the district attorney's written notification a motion for DNA testing pursuant to G.S. 15A-269, that is followed within 180 days of sending the request that the ~~sample of~~ evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the defendant and agreed to by the governmental entity in possession of the evidence.

(4) The governmental entity did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written

notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the governmental entity that intends to dispose of the sample of evidence. The governmental entity may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing, the court may enter an order authorizing the governmental entity to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law;

(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or

(3) May have value for biological analysis but is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.

(e) The court order allowing the disposition of the evidence pursuant to this section may require the governmental entity to take reasonable measures to remove or preserve portions of evidence suitable for future biological testing or may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending."

SECTION 3. G.S. 15A-269(b) reads as rewritten:

"(b) The court shall grant the motion for DNA testing of the evidence upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;~~and~~

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the ~~defendant.~~defendant; and

(3) The defendant has signed a sworn affidavit of innocence."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal."

SECTION 5. This act becomes effective March 1, 2008.

HOUSE BILL 1500:
DNA Evidence/Preserve & Access by Defendant

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 16, 2007
Introduced by:	Reps. Glazier, Ross	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition H1500-CSRI-21 [v.13]		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1500 would make several changes to the DNA testing laws.

BILL ANALYSIS:

Section 1 amends G.S. 15A-267(c) to allow pre-trial testing of DNA evidence that has previously been tested, but more accurate testing procedures are now available that were not available at the time of previous testing.

Section 2 amends G.S. 15A-268, governing the preservation of biological evidence. A new subsection (a) defines the term "biological evidence" to include not only individual samples of biological material, but also evidence that may contain blood, semen, hair, etc. The evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, and must be subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence.

The PCS would require that biological evidence be retained as follows:

- Death sentence – until execution.
- Violent felony – during incarceration, except in cases where conviction is based on a plea of guilty in which case the evidence must be retained for 3 years from the date of conviction.
- Sex Offense – during incarceration and any period of supervised release or probation.
- Felony convictions allowing DNA samples (excluding categories above) – 7 years from the date of conviction, except in cases where conviction is based on a plea of guilty in which case the evidence must be retained for 3 years from the date of conviction.

G.S. 15A-268 is further amended to require the governmental entity holding the evidence to petition the court to dispose of the evidence earlier than the periods of time provided above. The court may authorize the disposal of the evidence if the court determines by the preponderance of the evidence that the evidence 1) has no significant value for biological analysis, 2) has no significant value for biological analysis and is in some way impractical to retain, or 3) may have value for biological analysis but is in some way impractical to retain. The court may order the governmental entity to take measures to remove or preserve portions of evidence suitable for future testing or may provide the defendant with the opportunity to take those measures. An order regarding disposal of the evidence may be appealed by the defendant within 30 days.

Section 3 amends G.S. 15A-269(b), governing postconviction DNA testing, to require the defendant to sign a sworn affidavit of innocence.

Section 4 creates a new G.S. 15A-270.1 which provides that the defendant may appeal any order denying the defendant's motion for DNA testing, including an interlocutory appeal.

EFFECTIVE DATE: This act becomes effective March 1, 2008.

Susan Sitze, counsel to House Judiciary I, substantially contributed to this summary.

H1500e2-SMRI-CSRI-21 v13

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1810

Committee Substitute Favorable 5/9/07

Short Title: VAWA 2005 Compliance. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO BRING STATE LAW INTO COMPLIANCE WITH THE FEDERAL VIOLENCE AGAINST WOMEN ACT OF 2005.

The General Assembly of North Carolina enacts:

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

"**§ 15A-831.1. Polygraph examinations of victims of sexual assaults.**

(a) A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

(b) An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

(1) That taking the polygraph examination is voluntary.

(2) That the results of the examination are not admissible in court.

(3) That the person's decision to submit to or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

(c) An agency which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person."

SECTION 2. The Administrative Office of the Courts, in cooperation with the North Carolina Coalition Against Domestic Violence and the North Carolina Governor's Crime Commission, shall develop a form to comply with the criminal case firearm notification requirements of the Violence Against Women Act of 2005. The form shall be available for use by the courts no later than December 31, 2007. Effective January 1, 2008, all defendants convicted of crimes subject to the firearm notification requirements shall be provided a copy of the form by the court.

SECTION 3. Section 1 of this act becomes effective December 1, 2007, and applies to sexual assault offenses alleged to have been committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1810:
VAWA 2005 Compliance

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 17, 2007
Introduced by:	Rep. Ross	**Summary by:**	Kory Goldsmith
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 1810 brings the State into compliance with the federal Violence Against Women Act of 2005.

BILL ANALYSIS:

Section 1 of the bill creates a new G.S. 15A-831.1, which prohibits law enforcement from requiring a person claiming to be a victim or a witness of sexual assault to submit to a polygraph or similar examination as a precondition of conducting an investigation into the matter.

If an agency wishes to perform a polygraph examination, they must inform the person that: 1) taking the polygraph is voluntary, (2) the results of the polygraph are not admissible in court, and (3) whether or not the person submits to the polygraph will not be the sole basis for a decision not to investigate the matter.

If an agency declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph, the agency shall provide to that person, in writing, the reasons why the agency did not pursue the investigation.

Section 2 of the bill requires the Administrative Office of the Courts, in cooperation with the NC Coalition Against Domestic Violence and the NC Governor's Crime Commission, to develop a form to comply with the criminal case firearm notification requirements of the Violence Against Women Act of 2005. The form must be available no later than December 31, 2007, and effective January 1, 2008, all defendants convicted of crimes subject to the firearm notification requirements shall be provided a copy of the form by the court.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

Susan Sitze, counsel to House Judiciary I, substantially contributed to this summary.

H1810e2-SMRC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 854
PROPOSED COMMITTEE SUBSTITUTE S854-CSRC-46 [v.7]

6/20/2007 2:49:18 PM

Short Title: Amend Private Protective. Services Act. (Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT AMENDING THE PRIVATE PROTECTIVE SERVICES ACT AND AMENDING THE FIREARMS LAWS EFFECTING ARMED SECURITY GUARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3 reads as rewritten:

"**§ 74C-3. Private protective services profession defined.**

(a) As used in this Chapter, the term "private protective services profession" means and includes all of the following:

(1) ~~"Armored car profession" means any~~ Armored car profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other ~~valuables for a fee or other valuable consideration.~~ valuables. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) ~~"Counterintelligence service profession" means any~~ Electronic countermeasures profession. - Any person, firm, association, or corporation which for a fee or other valuable consideration discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or ~~corporation for a fee or other valuable consideration.~~ corporation.

(4) ~~"Courier service profession" means any~~ Courier service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious ~~service for a fee or other valuable consideration.~~ services. Armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) ~~"Detection of deception examiner" means any~~ Detection of deception examiner. – Any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(6) ~~"Security guard and patrol profession" means any~~ Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and ~~performing~~ performs one or more of the following functions:

a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private ~~property;~~property.

b. Prevention, observation, or detection of any unauthorized activity on private ~~property;~~property.

c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security ~~services; or~~services.

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(7) ~~"Guard dog service profession" means any~~ Guard dog service profession. – any person, firm, association, or corporation which for a fee or other valuable consideration contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or ~~property for a fee or other valuable consideration.~~property.

(8) ~~"Private detective" or "private investigator" are synonymous and mean any~~ Private detective or private investigator. – Any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning ~~the below-listed topics~~ any of the following on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United ~~States;~~States.
b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any ~~person;~~person.
c. The location, disposition, or recovery of lost or stolen ~~property;~~property.
d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to ~~properties;~~properties.
e. Securing evidence to be used before any court, board, officer, or investigative ~~committee; or~~committee.
f. Protection of individuals from serious bodily harm or death.

(9) ~~"Special limited guard and patrol profession" means any~~ Special limited guard and patrol profession. – Any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license.

(b) "Private protective services" shall not ~~mean:~~include any of the following:

(1) Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance ~~company;~~company.
(2) An officer or employee of the United States, this State, or any political subdivision of either while ~~such~~ the officer or employee is engaged in the performance of his or her official duties within the course and scope of his or her employment with the United States, this State, or any political subdivision of ~~either;~~either.
(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:
a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,
b. Information for employment purposes,
c. Information for the underwriting of insurance involving the consumer,
d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a

governmental instrumentality required by law to consider an applicant's financial responsibility, or

e. A legitimate business need for the information in connection with a business transaction involving the consumer;

(4) An attorney at law licensed to practice in North Carolina while engaged in ~~such~~ the practice of law and ~~his~~ the attorney's agent, provided ~~said~~ the agent is performing duties only in connection with his or her principal's practice of law;

(5) The legal owner or lien holder, and his or her agents and employees, of personal property which has been sold in a transaction wherein a security interest in personal property has been created to secure the sales transaction, who engage in repossession of ~~said~~ the personal property;

(6) Repealed by Session Laws 1989, c. 759, s. 3.

(7) Repealed by Session Laws 1981, c. 807, s. 1.

(8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job for that person, firm, association, or corporation and, while performing ~~such~~ the job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a licensee;

(9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General Statutes;

(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment;

(11) A person who conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:

a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) Research laboratories and consultants who analyze, test, or in any way apply their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and give their opinions and findings to the requesting source or to a designee of the requestor;

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of ~~his~~ the employee's duties, the provisions of G.S. 74C-13 apply;

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the business; or

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts."

SECTION 2. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power ~~to:~~do all of the following:

(1) ~~Promulgate~~ Adopt rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this ~~Chapter;~~Chapter.

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this ~~Chapter;~~Chapter.

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this ~~Chapter;~~Chapter.

(4) Adopt and amend bylaws, consistent with law, for its internal management and ~~control;~~control.

(5) Approve individual applicants to be licensed or registered according to this ~~Chapter;~~Chapter.

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall

be in accordance with Chapter 150B of the General Statutes of North ~~Carolina:~~Carolina.

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in ~~court:~~court.

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) ~~Establish~~ Adopt rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of ~~such schools; and~~ the schools.

(10) Contract for services as necessary to carry out the functions of the Board.

(11) Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter.

(12) Approve a design for a badge or shield that indicates a person is licensed or registered to engage in private protective services. The badge or shield shall be approved by the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police."

SECTION 3. G.S. 74C-9 reads as rewritten:

"**§ 74C-9. Form of license; term; renewal; posting; branch offices; not assignable; late renewal fee.**

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee,

(2) The name under which the licensee is to operate, and

(3) The number and expiration date of the license.

(b) The license shall be issued for a term of ~~one year.~~two years. A trainee permit shall be issued for a term of ~~one year.~~two years. All licenses must be renewed prior to the expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the licensee's principal place of business, in North Carolina, unless for good cause exempted by the Director. A license issued under this Chapter is not assignable. The Board may require all licensees to complete continuing education courses approved by the Board before renewal of their licenses.

(c) Repealed by Session Laws 1989, c. 759, s. 7.

(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of one year. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful

completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ~~($250.00);~~($250.00) per year of the license term;

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ($50.00);

(5) A late renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the licensee;

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);

(7) An application fee for ~~an armed security guard~~a firearm registration permit not to exceed fifty dollars ($50.00);

(8) A new, renewal, replacement, or reissuance fee for ~~an armed security guard~~a firearm registration permit not to exceed thirty dollars ($30.00);

(9) An application fee for certification as a certified trainer not to exceed fifty dollars ($50.00);

(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ($25.00);

(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);

(12) An unarmed registration transfer fee not to exceed fifteen dollars ($15.00);

(13) A branch office license fee not to exceed fifty dollars ($50.00); and

(14) A special limited guard and patrol license fee not to exceed one hundred dollars ($100.00).

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter.

(f) A license or trainee permit granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by the licensee or permit holder to the Director of intended renewal, the payment of the proper fee, and evidence of a policy of liability insurance as prescribed in G.S. 74C-10(e).

The renewal shall be finalized before the expiration date of the license. In no event will renewal be granted more than three months after the date of expiration of a license or trainee permit.

(g) Upon notification of approval of ~~his~~ the application by the Board, an applicant must furnish evidence that ~~he~~ the applicant has obtained the necessary liability insurance required by G.S. 74C-10 and obtain the license applied for or ~~his~~ the application shall lapse.

(h) Trainee permits shall not be issued to applicants that qualify for a private detective license. A licensed private detective may supervise no more than five trainees at any given time."

SECTION 4. G.S. 74C-10(e) reads as rewritten:

"(e) No security guard and patrol, armored car, or special limited guard and patrol license shall be issued under this Chapter unless the applicant files with the Board evidence of a policy of liability insurance. The policy must provide for the following minimum coverage: fifty thousand dollars ($50,000) because of bodily injury or death of one person as a result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his employment; subject to said limit for one person, one hundred thousand dollars ($100,000) because of bodily injury or death of two or more persons as the result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his or her agency; twenty thousand dollars ($20,000) because of injury to or destruction of property of others as the result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his or her agency. If the licensee, other than a security guard and patrol, armored car, or special limited guard and patrol licensee, carries a firearm while engaged in private protective services activities, the license shall obtain a policy of liability insurance with a minimum coverage as specified above. A licensee is deemed to be 'carrying a firearm' for purposes of this section while engaged in private protective services if the licensee has a firearm on the licensee's person or in the automobile the licensee is using to perform private protective services."

SECTION 5. G.S. 74C-10(h) reads as rewritten:

"(h) Every security guard and patrol licensee, armored car licensee, special limited guard and patrol licensee, or licensee carrying a firearm while engaged in private protective services ~~licensee~~ shall at all times maintain on file with the Board the certificate of insurance required by this Chapter in full force and effect and upon failure to do so, the license of such licensee shall be automatically suspended and shall not be reinstated until an application therefor, in the form prescribed by the Board, is filed together with a proper insurance certificate.

No cancellation or refusal to renew by an insurer of a licensee under this Chapter shall be effective unless the insurer has given the insured licensee notice of the cancellation or refusal to renew. Upon termination of insurance coverage for said licensee, the insurer shall give notice to the Director of the Board."

SECTION 6. G.S. 74C-11(d) reads as rewritten:

"(d) An unarmed security guard shall make application to the Director for an unarmed registration card which the Director shall issue to ~~said~~ the applicant after receipt of the information required to be submitted by ~~his~~ the applicant's employer pursuant to subsection ~~(a),~~(a) of this section, and after meeting any additional requirements which the Board, in its discretion, deems to be necessary. The unarmed

security guard registration card shall be in the form of a pocket card designed by the Board, shall be issued in the name of the applicant, and may have the applicant's photograph affixed ~~thereto.~~ to the card. The unarmed security guard registration card shall expire one year after its date of issuance and shall be renewed every year. The Board may require all registration holders to complete continuing education courses approved by the Board before renewal of their registrations. If an unarmed registered security guard is terminated by a licensee and changes employment to another security guard and patrol company, the security guard's registration card shall remain valid, provided the security guard pays the unarmed guard registration transfer fee to the Board and a new unarmed security guard registration card is issued. An unarmed security guard whose transfer registration application and transfer fee have been sent to the Board may work with a copy of the transfer application until the registration card is issued."

SECTION 7. G.S. 74C-12 reads as rewritten:

"**§ 74C-12. Denial, suspension, or revocation of license, registration, or ~~permit.~~permit; duty to report criminal arrests.**

(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder ~~has:~~has done any of the following acts:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or ~~permit;~~permit.

(2) Violated any provision of this ~~Chapter;~~Chapter.

(3) Violated any rule ~~promulgated~~ adopted by the Board pursuant to the authority contained in this ~~Chapter:~~Chapter.

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a ~~state;~~state.

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this ~~Chapter;~~Chapter.

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the ~~parties;~~parties.

(8) Knowingly made any false report to the employer or client for whom information is being ~~obtained;~~obtained.

(9) Committed an unlawful breaking or entering, assault, battery, or ~~kidnapping;~~kidnapping.

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a ~~licensee;~~licensee.

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal ~~proceeding;~~proceeding.

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court ~~proceeding;~~proceeding.

(14) Failed to make the required contribution to the Private Protective Services Recovery Fund or failed to maintain the certificate of liability insurance required by this ~~Chapter;~~Chapter.

(15) Violated the firearm provisions set forth in this ~~Chapter;~~Chapter.

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this ~~Chapter;~~Chapter.

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying ~~agent;~~agent.

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under ~~G.S. 122C-271;~~G.S. 122C-271.

(20) Failed or refused to offer a report to a client within 30 days of the client's written ~~request;~~request after the client has paid for services rendered.

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for ~~cause;~~cause.

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this ~~Chapter;~~Chapter.

(23) Divulged to any person, except as required by law, any information acquired by ~~him~~ the licensee holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or ~~his~~ district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the ~~client;~~client.

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental ~~authority;~~authority.

(25) Intemperate habits or lacks good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this ~~subdivision;~~subdivision.

(26) Advertised or solicited business using a name other than that in which the license was ~~issued;~~issued.

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a ~~private detective or private investigator~~law enforcement officer while licensed under the provisions of this Chapter as a private investigator.

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-(12).

(b) The denial, revocation, or suspension of a license, registration, or permit by the Board shall be in writing, be signed by the Director of the Board, and state the grounds upon which the Board decision is based. The aggrieved person shall have the right to appeal from this decision as provided in Chapter 150B of the General Statutes. The aggrieved person shall file the appeal within 60 days of receipt of the Board's decision.

(c) The following persons may not be issued a license, registration, or permit under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes.

(d) A licensee shall report to the Board in writing within 30 days any charge, arrest for, or conviction of a misdemeanor or felony for any of the following:

(1) Crimes that have as an essential element dishonesty, deceit, fraud, or misrepresentation.

(2) Illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage.

(3) Illegal use, carrying, or possession of a firearm.

(4) Acts involving assault.

(5) Acts involving unlawful breaking or entering, burglary, or larceny.

(6) Any offense involving moral turpitude.

For purposes of this section, the term 'conviction' includes the entry of a plea of guilty, a plea of nolo contendere, prayer for judgment continued, or a finding of guilt by a court of competent jurisdiction. The licensee's failure to report a charge, arrest for, or conviction of a misdemeanor or felony is grounds for revocation of the license."

SECTION 8. G.S. 74C-13 reads as rewritten:

"**§ 74C-13. Armed ~~security guard~~licensee or registered employee required to have firearm registration permit; ~~security guard~~firearms training.**

(a) It shall be unlawful for any person performing ~~the duties of an armed security guard~~private protective services duties to carry a firearm in the performance of those

duties without first having met the qualifications ~~as set forth in~~ of this section and having been issued a firearm registration permit by the Board. ~~For the purposes of this section, the following terms are defined:~~

(a1) The following definitions apply in this section.

(1) Armed private investigator. - A licensed private investigator who, at any time, wears, carries, or possesses a firearm in the performance of duty.

~~(1)~~(1a) ~~"Armed security guard" means an~~ Armed security guard. – An individual employed by a contract security company or a proprietary security organization whose principal duty is that of an armed security watchman; armed armored car service guard; armed alarm system company responder; ~~private detective;~~ or armed courier service who at any time wears, carries, or possesses a firearm in the performance of duty.

(2) ~~"Contract security company" means any~~ Contract security company. – Any person, firm, association, or corporation engaging in a private protective services profession that provides services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(3) ~~"Proprietary security organization" means any~~ Proprietary security organization. – Any person, firm, association, or corporation or department thereof which employs security guards, alarm responders, armored car personnel, or couriers who are employed regularly and exclusively as an employee by an employer in connection with the business affairs of ~~such~~ the employer.

(b) It shall be unlawful for any person, firm, association, or corporation and its agents and employees to employ an armed security guard or an armed private investigator and knowingly authorize or permit ~~him~~ the armed security guard or armed private investigator to carry a firearm during the course of performing his or her duties as an armed security guard or an armed private investigator if the Board has not issued him or her a firearm registration permit under this section or if the person, firm, association, or corporation permits an armed security guard or an armed private investigator to carry a firearm during the course of performing his or her duties whose firearm registration permit has been suspended, revoked, or has otherwise expired:

(1) ~~An armed security guard~~ A firearm registration permit grants authority to the armed security guard, or armed private investigator, while in the performance of his or her duties or traveling directly to and from work, to carry ~~a standard .38 caliber or .32 caliber revolver or any other~~any firearm approved by the Board and not otherwise prohibited by law. The use of any firearm not approved by the Board is prohibited.

(2) All firearms carried by authorized armed security guards in the performance of their duties shall be owned or leased by the employer. Personally owned firearms shall not be carried by an armed security guard in the performance of his or her duties.

(c) The applicant for ~~an armed security guard~~a firearm registration permit shall submit an application to the Board on a form provided by the Board.

(d) Each ~~armed security guard~~ firearm registration permit issued under this section to an armed security guard shall be in the form of a pocket card designed by the Board and shall identify the contract security company or proprietary security organization by whom the holder of the firearm registration permit is employed. ~~An armed security guard~~A firearm registration permit issued to an armed security guard expires one year after the date of its issuance and must be renewed annually unless the permit holder's employment terminates before the expiration of the permit. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(d1) Each firearm registration permit issued under this section to an armed private investigator shall be in the form of a pocket card designed by the Board and shall identify the name of the armed private investigator. While carrying a firearm and engaged in private protective services, the armed private investigator shall carry the firearms registration permit issued by the Board, together with valid identification, and shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a firearm, whether concealed or in plain view, when approached or addressed by the law enforcement officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. A private investigator firearm registration permit expires one year from the date of issuance and shall be renewed annually. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(e) If ~~the holder of~~ an armed security guard ~~firearm registration permit~~ terminates his or her employment with the contract security company or proprietary security organization, the firearm registration permit expires and must be returned to the Board within 15 working days of the date of termination of the employee.

(f) A contract security company or proprietary security organization shall be allowed to employ an individual for 30 days as an armed security guard pending completion of the firearms training required by this Chapter, if the contract security company or proprietary security organization obtains prior approval from the Director. The Board and the Attorney General shall provide by rule the procedure by which an armed private investigator, a contract security ~~company~~ company, or a proprietary security organization applicant may be issued a temporary firearm registration permit by the Director of the Board pending a determination by the Board of whether to grant or deny an applicant a firearm registration permit.

(g) The Board may suspend, revoke, or deny ~~an armed security guard~~a firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this section or rules promulgated by the Board to implement this section. The Director may summarily suspend ~~an armed security guard~~a firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against the holder of the permit.

(h) The Board and the Attorney General shall establish a firearms training program for ~~armed security guards~~licensees and registered employees to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General may approve training programs conducted by a contract security company and the security department of a proprietary security organization, if the contract security company or security department of a proprietary security organization offers the courses listed in subdivision (1) of this subsection and if the instructors of the training program are certified trainers approved by the Board and the Attorney General:

(1) The basic training course approved by the Board and the Attorney General shall consist of a minimum of four hours of classroom training which shall include:

a. Legal limitations on the use of hand guns and on the powers and authority of an armed security guard,

b. Familiarity with this ~~section.~~section;

c. Range firing and procedure and hand gun safety and ~~maintenance,~~maintenance; and

d. Any other topics of armed security guard training curriculum which the Board deems necessary.

(2) An applicant for ~~an armed security guard~~a firearm registration permit must fire a minimum qualifying score to be determined by the Board and the Attorney General on any approved target course approved by the Board and the Attorney General.

(3) ~~An armed security guard~~A firearms registrant must complete a refresher course and shall requalify on the prescribed target course prior to the renewal of his or her firearm registration permit.

(4) The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this section.

(i) The Board may not issue ~~an armed security guard~~a firearm registration permit to an applicant until the applicant's employer submits evidence satisfactory to the Board that the applicant:

(1) Has satisfactorily completed an approved training course.

(2) Meets all the qualifications established by this section and by the rules promulgated to implement this section.

(3) Is mentally and physically capable of handling a firearm within the guidelines set forth by the Board and the Attorney General.

(j) The Board and the Attorney General are authorized to prescribe reasonable rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued ~~an armed security guard~~a firearm registration permit by the Board.

(k) All fees collected pursuant to G.S. 74C-9(e)(7) and (8) shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering the firearms provisions of this Chapter.

(l) The Board and the Attorney General shall establish a training program for certified trainers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board or the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(1) The Board and the Attorney General shall also establish renewal requirements for certified trainers. The Board may require all certified trainers to complete continuing education courses approved by the Board before renewal of their certifications.

(2) No certified firearms trainer shall certify ~~an armed security guard~~a licensee or registrant unless the ~~armed security guard~~licensee or registrant has successfully completed the firearms training requirements set out above in subsection (h) of this section.

(m) The Board and the Attorney General shall establish a training program for unarmed security guards to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(n) A private investigator shall be permitted to carry a concealed weapon during the performance of his or her duties as a private investigator upon: (i) obtaining a concealed weapon permit issued pursuant to G.S. 14-415.11; (ii) successfully completing the firearms training course approved by the Board and the Attorney General; and (iii) having a notation affixed to the face of the firearms registration card designating that the armed private investigator is allowed to carry a concealed weapon. A private investigator who does not carry a weapon during the course of his or her duties as a private investigator but who wishes to carry a concealed weapon while not engaged in private investigative duties shall be permitted to do so upon completion of the requirements set forth in Article 54B of Chapter 14 of the General Statutes."

SECTION 9. Article 1 of Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-22. Continuing education.**

The Board may require individuals holding a license, registration, certificate, or permit to complete continuing education courses approved by the Board before renewal. The Board shall establish, by rule, the number of hours of continuing education necessary for renewal and any other requirements for completion of continuing education courses. The Board shall have the authority to approve continuing education courses and shall consider the continuing education course criteria, including the course curriculum, the qualifications of the instructor, the potential benefit to the industry, and any other criteria the Board deems appropriate."

SECTION 10. G.S. 74C-30 reads as rewritten:

"**§ 74C-30. Private Protective Services Recovery Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services Recovery Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. Said Fund shall be used in the

manner provided in this Article for the payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.

(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

~~(1) On July 1, 1983, the Board shall charge every licensee and trainee possessing a license or trainee permit on that date a fee of fifty dollars ($50.00);~~

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars ($100,000);~~twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to ~~one hundred thousand dollars ($100,000).~~twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from ~~such~~ the investments shall be deposited to the credit of the Fund. The Board in its discretion, may use any and all of the proceeds from ~~such~~ the investments or funds that exceed twenty-five thousand dollars ($25,000) for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the ~~industry;~~industry.

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees and ~~trainees; and~~trainees.

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation

receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: 'The course is being given in whole or in part by a grant from the Private Protective Services Board.'

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 11. G.S. 74C-31(d) reads as rewritten:

"(d) Until ~~such time as~~ the Fund reaches ~~one hundred thousand dollars ($100,000),~~twenty-five thousand dollars ($25,000), or at any time the Fund has insufficient assets in excess of ~~one hundred thousand dollars ($100,000)~~twenty-five thousand dollars ($25,000) to pay outstanding claims, the State Treasurer shall not disburse any payments to an aggrieved party. However, any party aggrieved and awarded payment as ordered by the Board which order is dated after July 1, 1983, shall hold a vested right for payment plus interest as provided in G.S. 24-1 once the Fund reaches a sufficient level for payments. Authorized payments which cannot be made due to the lack of funds will be paid as funds become available, beginning with those payments which have been unsatisfied for the longest period of time."

SECTION 12. This act becomes effective October 1, 2007.

SENATE BILL 854:
Amend Private Protective Services Act

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 20, 2007
Introduced by:	Sen. Snow	**Summary by:**	Kory Goldsmith
Version:	PCS to First Edition S854-CSRC-46[v.6]		Committee Counsel

SUMMARY: Makes a number of changes to Chapter74C of the General Statutes which regulates the private protective services profession. It authorizes the Private Protective Services Board ("Board") to require continuing education for license renewal, changes the license renewal period from annually to biannually, prohibits anyone who is engaged in private protective services from carrying a firearm unless registered with the Board, and increases the minimum fund balance in the Private Protective Services Recovery Fund.

The act becomes effective October 1, 2007.

BILL ANALYSIS:

Section 1 makes stylistic changes and corrections to the definitions section of the Chapter.

Section 2 authorizes the Private Protective Services Board to approve training schools and instructors, and to approve badge designs subject to the approval of the designs by the Sheriffs Association and the Association of Chiefs of Police.

Sections 3, 6, and 9 authorize the Board to require continuing education as a condition of issuing or renewing a license or issuing or renewing a firearms registration. Section 3 also increases the term of a license from 1 to 2 years.

Sections 4 and 5 requires security guard and patrol, armored car, special limited guard and patrol or any licensee who carries a fire arm to obtain and maintain liability insurance.

Section 7 authorizes the Board to suspend or revoke a license if the licensee has carried or worn a badge purporting to represent that the person is a law enforcement office. The Board could also suspend or revoke a license if the licensee uses a badge that has not been approved by the Board. This section also requires that a licensee must report to the Board any charge, arrest for, or conviction for certain misdemeanors or felonies. Failure to report this information within 30 days will be grounds for the Board to revoke the license.

Section 8 makes it unlawful for any person to carry a firearm unless the person has registered with the Board. Registration is evidenced by a pocket card which must be displayed to law enforcement officers.

Section 10 increases from $10,000 to $25,000 the minimum amount that should be held in the Private Protective Services Recovery Fund. Upon a unanimous vote of the Board, funds in excess of $25,000 may be used for operating expenses.

Section 11 prohibits any payments from the Fund if the balances is less than $25,000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 854 Amendment No. _____

COMMITTEE SUBSTITUTE S854-CSRC-46 (to be filed in by Principal Clerk)

Rep.)
Sen.) Snow

moves to amend the bill on page 8, line 22

( ) WHICH CHANGES THE TITLE

by ~~deleting~~ deleting the word "license" and substituting "licensee".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1202

Short Title:	Litter Violation Reported by Citizen.	(Public)
Sponsors:	Senator Jacumin.	
Referred to:	Judiciary II (Criminal).	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CITATION MAY BE ISSUED FOR A LITTERING OFFENSE THAT INVOLVES THE OPERATION OF A MOTOR VEHICLE BASED ON THE AFFIDAVIT OF A WITNESS.

The General Assembly of North Carolina enacts:

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

"**§ 14-399.3. Civil penalty for litter may be assessed based on witness's affidavit.**

(a) Reporting of Litter Violation. – Any North Carolina resident who witnesses a littering violation under G.S.14-399 that involves the operation of a motor vehicle may file a sworn affidavit reporting the incident with a magistrate in the county in which the violation occurred. The affidavit may be mailed by first-class mail to the magistrate in the appropriate county. The affidavit shall include the license plate of the vehicle involved in the violation, a description of the vehicle, and the date, location, and approximate time of the violation.

(b) Citation Issued. – The magistrate shall issue a citation to the owner of the vehicle based on the affidavit filed by the witness. The citation shall clearly state the violation, the penalty for the violation, the procedure for paying the civil penalty assessed, and the manner in which the violation may be challenged. The citation shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration.

(c) Responsibility of Vehicle Owner and Procedure for Challenging the Violation. – Notwithstanding G.S. 14-399.3(b) the owner of the vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes to a magistrate of the county that issued the citation the following:

(1) The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

(2) An affidavit stating that the vehicle involved was at the time stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(d) Civil Penalties. – Notwithstanding G.S. 14-399, a violation enforced under this section shall be a noncriminal violation for which a civil penalty of one hundred dollars ($100.00) shall be assessed. If the vehicle owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional civil penalty for failure to respond not to exceed twenty-five dollars ($25.00). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The actual costs of collection, not to exceed twenty percent (20%) of the amount collected shall be remitted to the clerk of court to be credited to the office of the magistrate.

(e) Administrative Office of the Courts to Establish Collection and Appeal Procedures. – The Administrative Office of the Courts shall establish procedures for the collection of the penalties assessed under this section and may enforce the penalties by civil action in the nature of debt."

SECTION 2. G.S. 7A-292 is amended by adding the following new subdivisions to read:

"(15) To accept the filing of affidavits reporting litter violations and to issue citations pursuant to G.S. 14-399.3.

(16) To hear and enter judgment in all litter cases appealed under G.S. 14-399.3."

SECTION 3. By December 1, 2007, the Administrative Office of the Courts shall develop an affidavit form that may be used to report a violation as provided by G.S. 14-399.3. The Administrative Office of the Courts shall provide the forms to each magistrate in the State and shall also make the form accessible to the public through the Internet. Each magistrate shall make the printed forms available to any member of the general public who requests one.

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1202
PROPOSED COMMITTEE SUBSTITUTE S1202-CSTE-4 [v.11]

6/20/2007 4:34:31 PM

Short Title: Est. Commission on Littering/Study. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE COMMISSION TO REDUCE LITTERING TO STUDY AND DEVELOP ALTERNATIVE MECHANISMS TO ENFORCE LITTERING STATUTES FOR VIOLATIONS THAT INVOLVE THE OPERATION OF A MOTOR VEHICLE OR A VESSEL.

Whereas, litter diminishes the quality of the environment, contributes to water contamination, endangers wildlife, and reduces the quality of life in North Carolina; and

Whereas, cleaning litter from North Carolina's roadsides and waterways costs taxpayers millions of dollars; and

Whereas, enforcement of criminal laws for littering offenses involving the operation of a motor vehicle or a vessel has very little effect on reducing litter on the State's roads and waterways; and

Whereas, it is incumbent upon the State to develop alternative enforcement mechanisms that effectively reduce littering; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Commission Established. – The Study Commission to Reduce Littering ("Commission") is hereby established.

SECTION 2. Membership. –The Commission shall consist of 18 members as follows:

(1) Four Senators appointed by the President Pro Tempore of the Senate.

(2) Four Representatives appointed by the Speaker of the House of Representatives.

(3) One representative from the Department of Crime Control and Public Safety.

(4) One representative from the Administrative Office of the Courts.

(5) One representative from the Department of Transportation.

(6) One representative from the Department of Commerce.

(7) One representative from the North Carolina Wildlife Resources Commission.
(8) One representative from the North Carolina Association of County Commissioners.
(9) One representative from the North Carolina League of Municipalities.
(10) One representative from the North Carolina Sheriffs' Association.
(11) One representative from the North Carolina Association of Chiefs of Police.
(12) One representative from the School of Government at the University of North Carolina at Chapel Hill.

SECTION 3. Cochairs. – The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 4. Quorum. – A quorum of the Commission shall consist of 10 members.

SECTION 5. Vacancies. – Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 6. Purpose and Duties. – The Commission shall develop alternative mechanisms to enforce littering statues for violations that involve the operation of a motor vehicle or a vessel. As part of its work, the Commission shall also:

(1) Collect research and information from other states and jurisdictions regarding alternative procedures to enforce littering laws.
(2) Examine effective mechanisms that use citizen participation to detect littering violations and to initiate enforcement of littering laws.
(3) Determine whether alternative enforcement mechanisms, such as a public nuisance, infraction, or determinations based upon affidavits can be developed to enforce littering laws.

SECTION 7. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Commission to aid in its work.

SECTION 9. Meetings. – The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 10. Report. – The Commission shall report its findings and recommendations no later than May 15, 2008 to the 2008 Regular Session of the 2007 General Assembly. The Commission shall terminate upon the submission of its report or upon the convening of the 2008 Regular Session of the 2007 General Assembly, which ever occurs first.

SECTION 11. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

SECTION 12. Effective Date. – This act is effective when it becomes law.

SENATE BILL 1202:
Est. Commission on Littering/Study

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 20, 2007
Introduced by:	Sen. Jacumin	**Summary by:**	Susan Barham
Version:	PCS to First Edition S1202-CSTE		Research Assistant

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 1202 would establish the Commission to Reduce Littering to study and develop alternative methods for enforcing littering statutes when violations involve a motor vehicle or a vessel.***

BILL ANALYSIS: The PCS to Senate Bill 1202 would create the Commission to Reduce Littering to study and develop alternative procedures to enforce littering statutes for violations that involve the operation of a motor vehicle or a vessel.

The Commission shall consist of 18 members - four Senators appointed by the President Pro Tempore of the Senate, four Representatives appointed by the Speaker of the House of Representatives, and one representative from each of the following: Department of Crime Control and Public Safety, Administrative Office of the Courts, Department of Transportation, Department of Commerce, NC Wildlife Resources Commission, NC Association of County Commissioners, NC League of Municipalities, NC Sheriffs' Association, NC Association of Chiefs of Police, and the School of Government at UNC Chapel Hill.

As part of the study, the Commission shall consider the following:

- Information and research from other states and jurisdictions regarding alternative methods to enforce littering laws.
- Effective ways to use citizen participation in the detection of littering violations and in the enforcement of littering laws.
- Alternative enforcement mechanisms such as a public nuisance, infraction, or determinations based on affidavits.

The PCS to Senate Bill 1202 directs the Commission to report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly no later than May 15, 2008.

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

Litter Tickets Comparison

Department of Crime Control and Public Safety
Source: 2006 Year End Litter Report

In 2006, the State Highway Patrol issued 885 tickets for littering. Troopers issued 301 citations during the spring and fall Litter sweep.

State Highway Patrol Recap of Litter Charges G.S.14-399 and local ordinances:

Year	Number of Charges
2006	885
2005	708
2004	681

State Highway Patrol Recap of Improper Loading/covering of Vehicle G.S. 0-116(g):

Year	Number of Charges
2006	1,233
2005	1,384
2004	1,164

Total charges by SHP 2006 = 2,118. Total charges by all agencies = 5,636

North Carolina State Highway Patrol
Enforcement Activities
Source: http://www.nccrimecontrol.org/Index2.cfm?a=000003,000014,000791

Enforcement Activities	**2006**
Child Restraint Violations	15,486
Seat Belt Violations	135,959
Driving While Impaired	23,688
Speeding	434,300
Warning Tickets	242,270
Total Charges (for all violations, including those listed above)	1,101,841

$\frac{885}{1,101,841} = .0008$

That's 1 in Every 1245 Citations!

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1202 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 1202 ~~ESSTE~~ - 4

Rep.) Sen.) Berger

moves to amend the bill on page 2, line 28-29

( ) WHICH CHANGES THE TITLE

by inserting the following between the lines:

"(4) Determine whether placing a refundable deposit on containers will significantly reduce roadside littering."

withdrawn

SIGNED _____

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. _____ DATE 6/21/07

S. B. No. 1202 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1202-CSTE-4[v.11]

Rep.) Jacumin

Sen.)

moves to amend the bill on page 1, lines 10-11

( ) WHICH CHANGES THE TITLE

by inserting the following between the lines:

"Whereas, only one in every 1,245 citations issued by the State Highway Patrol is for a litter violation; and".

Withdrawn

SIGNED Jai Jacumin

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 550

Committee Substitute Favorable 5/15/07

Short Title: Modify School Employee Confidentiality Law. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAW PERTAINING TO THE CONFIDENTIALITY OF SCHOOL PERSONNEL FILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-321(a) is amended by adding three new subsections to read:

"(a1) Notwithstanding any other provision of this Chapter, information contained in a personnel file that is relevant to possible criminal misconduct may be made available to law enforcement and the district attorney to assist in the investigation of:

(1) A report made to law enforcement pursuant to G.S. 115C-288(g), or

(2) Any report to law enforcement regarding an arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of any personal or real property owned by the local board of education.

(a2) The employee shall be given five working days prior written notice of any disclosure under subsection (a1) of this section to permit the employee to apply to the district court for an in camera review prior to the date of disclosure to determine if the information is relevant to the possible criminal misconduct. Failure of the employee to apply for a review shall constitute a waiver by the employee of any relief under this subsection.

(a3) Statements or admissions made by the employee under the expressed threat of termination for failure to respond to questions by the local board of education shall not be admissible in any subsequent criminal proceeding against the employee."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 550

Committee Substitute Favorable 5/15/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H550-CSRD-35 [v.1]

6/20/2007 1:31:25 PM

Short Title: Modify School Employee Confidentiality Law. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAW PERTAINING TO THE CONFIDENTIALITY OF SCHOOL PERSONNEL FILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-321(a) is amended by adding three new subsections to read:

"(a1) Notwithstanding any other provision of this Chapter, information contained in a personnel file that is relevant to possible criminal misconduct may be made available to law enforcement and the district attorney to assist in the investigation of:

(1) A report made to law enforcement pursuant to G.S. 115C-288(g), or

(2) Any report to law enforcement regarding an arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of any personal or real property owned by the local board of education.

(a2) The employee shall be given five working days prior written notice of any disclosure under subsection (a1) of this section to permit the employee to apply to the district court for an in camera review prior to the date of disclosure to determine if the information is relevant to the possible criminal misconduct. Failure of the employee to apply for a review shall constitute a waiver by the employee of any relief under this subsection.

(a3) Statements or admissions made by the employee and produced under subsection (a1) shall not be admissible in any subsequent criminal proceeding against the employee."

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

HOUSE BILL 550:
Modify School Employee Confidentiality Law

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 20, 2007
Introduced by:	Rep. Love	**Summary by:**	Ben Popkin
Version:	PCS to Second Edition H550-CSRD		Committee Counsel

SUMMARY: House Bill 550 would amend the law relating to confidentiality of school personnel files to clarify that information contained in personnel files that is relevant to possible criminal misconduct may be made available to law enforcement and to district attorneys to assist in the investigation of certain criminal offenses. HB 550 would require that the employee be given notice of the disclosure and the right to seek review in district court.

The Proposed Committee Substitute would provide that statements or admissions made by an employee under subsection (a1) of the bill would be inadmissible in subsequent criminal proceedings.

CURRENT LAW:

Under current law, local boards of education are required to maintain records on each of its employees showing the employee's name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. These records are subject to inspection and examination by any person during regular business hours.

All other information contained in a personnel file is not subject to inspection and examination except under limited circumstances set forth in the statute.

BILL ANALYSIS:

House Bill 550 creates another exception to the confidentiality requirement. It provides that information relevant to a possible criminal misconduct may be made available to law enforcement officials and the district attorney in connection with the investigation of:

- A report made by a principal involving assault, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving use of a weapon, or possession of a controlled substance; or
- A report from anyone regarding arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of, or misuse of , any personal or real property owned by the local board of education.

The bill also requires that the employee be given five days prior written notice of the disclosure and the opportunity to apply to district court for an in camera review of the records to determine if the information is relevant to possible criminal misconduct.

Finally, the PCS provides that statements or admissions made by the employee under subsection (a1) of the bill are not admissible in any subsequent criminal proceeding against the employee.

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

Karen Cochrane-Brown, counsel to House Judiciary II, substantially contributed to this summary. H0550e2-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1487

Committee Substitute Favorable 5/2/07

Short Title: Pro Bono Emeritus Lawyers. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW INACTIVE LAWYERS TO PROVIDE PRO BONO LEGAL SERVICES AND TO CLARIFY ACTIVE MEMBERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-16 reads as rewritten:

"**§ 84-16. Membership and privileges.**

The membership of the North Carolina State Bar shall consist of two classes, active and inactive.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, who shall have paid the membership dues hereinafter ~~specified,~~ specified and satisfied all other obligations of membership, unless classified as an inactive member by the Council as hereinafter provided. No person other than a member of the North Carolina State Bar shall practice in any court of the State except foreign attorneys as provided by statute.

Inactive members shall ~~be all~~ be:

(1) All persons who have obtained a license to practice law in the State but who have been found by the Council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon, adjudicate, or offer an opinion concerning the legal effect of any act, document, or law.

(2) Persons allowed by the Council to solely represent indigent clients on a pro bono basis under the supervision of nonprofit corporations organized pursuant to Chapter 55A of the General Statutes.

All active members shall be required to pay annual membership fees, and shall have the right to vote in elections held by the district bar in the judicial district in which the member resides. Provided, that if a member desires to vote with the bar of some district

in which the member practices, other than that in which the member resides, the member may do so by filing with the Secretary of the North Carolina State Bar a statement in writing that the member desires to vote in the other district: Provided, however, that in no case shall the member be entitled to vote in more than one district."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1487

Committee Substitute Favorable 5/2/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1487-CSRO-32 [v.6]

6/20/2007 4:29:13 PM

Short Title: State Bar Changes. (Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY ACTIVE MEMBERSHIP IN THE STATE BAR AND ALLOW INACTIVE LAWYERS TO PROVIDE PRO BONO LEGAL SERVICES, TO MODIFY THE NUMBER OF MEMBERS ON THE STATE BAR COUNCIL TO EQUAL THE NUMBER OF JUDICIAL DISTRICTS PLUS 16, TO ALLOW LAW STUDENTS TO ACT AS LEGAL INTERNS FOR GOVERNMENT AGENCIES AND OUT-OF-STATE LAWYERS TO PROVIDE PRO BONO LEGAL SERVICES, AND TO REQUIRE THAT AN OUT-OF-STATE LAWYER FILE A REGISTRATION STATEMENT WITH THE STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-16 reads as rewritten:

"**§ 84-16. Membership and privileges.**

The membership of the North Carolina State Bar shall consist of two classes, active and inactive.

The active members shall be all persons who ~~shall~~ have ~~heretofore~~ obtained, ~~or who shall hereafter obtain,~~ a license or certificate, ~~which shall at the time be valid and effectual,~~ entitling them to practice law in the State of North Carolina, who ~~shall~~ have paid the membership dues ~~hereinafter~~ ~~specified,~~ specified, and who have satisfied all other obligations of membership. ~~unless classified as an inactive member by the Council as hereinafter provided.~~ No person other than a member of the North Carolina State Bar shall practice in any court of the State except foreign attorneys as provided by ~~statute.~~ statute, and natural persons representing themselves.

Inactive members shall ~~be all~~ be:

(1) All persons who have obtained a license to practice law in the State but who have been found by the Council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called

upon to give legal advice or counsel or to examine the law or to pass upon, adjudicate, or offer an opinion concerning the legal effect of any act, document, or law.

(2) Persons allowed by the Council solely to represent indigent clients on a pro bono basis under the supervision of an active member employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1.

All active members shall be required to pay annual membership fees, and shall have the right to vote in elections held by the district bar in the judicial district in which the member resides. ~~Provided, that if~~ If a member desires to vote with the bar of some district in which the member practices, other than that in which the member resides, the member may do so by filing with the Secretary of the North Carolina State Bar a statement in writing that the member desires to vote in the other ~~district: Provided,~~ district; provided, however, that in no case shall the member be entitled to vote in more than one district."

SECTION 2. G.S. 84-17 reads as rewritten:

"**§ 84-17. Government.**

The government of the North Carolina State Bar is vested in a council of the North Carolina State Bar referred to in this Chapter as the ~~"Council", which~~ "Council". The Council shall be composed of ~~55~~ a variable number of councilors equal to the number of judicial districts plus 16, ~~exclusive of officers, except as hereinafter provided, to be appointed or elected as hereinafter set forth,~~ the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar who shall be a councilor for one year from the date of expiration of his term as president. Notwithstanding any other provisions of the law, the North Carolina State Bar may acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments ~~hereto,~~ to this Chapter, and all other matters. There shall be one councilor from each judicial district and 16 additional ~~councilors as are necessary to make the total number of councilors 55.~~ councilors. The additional councilors shall be allocated and reallocated by the North Carolina State Bar every six years based on the number of active members of each judicial district bar according to the records of the North Carolina State Bar and in accordance with a formula to be adopted by the North Carolina State Bar, to insure an allocation based on lawyer population of each judicial district bar as it relates to the total number of active members of the State Bar.

A councilor whose seat has been eliminated due to a reallocation shall continue to serve on the Council until expiration of the remainder of the current term. A councilor whose judicial district is altered by the General Assembly during the councilor's term shall continue to serve on the Council until the expiration of the term and shall represent

the district wherein the councilor resides or with which the councilor has elected to be affiliated. If before the alteration of the judicial district of the councilor the judicial district included both the place of residence and the place of practice of the councilor, and if after the alteration of the judicial district the councilor's place of residence and place of practice are located in different districts, the councilor must, not later than 10 days from the effective date of the alteration of the district, notify the Secretary of the North Carolina State Bar of an election to affiliate with and represent either the councilor's district of residence or district of practice.

In addition to the ~~55~~ councilors, there shall be three public members not licensed to practice law in this or any other state who shall be appointed by the Governor. The public members may vote and participate in all matters before the Council to the same extent as councilors elected or appointed from the various judicial districts."

SECTION 3. G.S. 84-8 reads as rewritten:

"**§ 84-8. Punishment for violations; legal clinics of law schools and certain law students and lawyers excepted.**

Any person, corporation, or association of persons violating the provisions of G.S. 84-4 to ~~84-8~~ G.S. 84-7 shall be guilty of a Class 1 misdemeanor. ~~Provided, that~~ The provisions of G.S. 84-4 to ~~84-8~~ G.S. 84-7 shall not apply to the following:

(1) ~~any~~ Any law school ~~or law schools~~ conducting a legal clinic and receiving as ~~their~~ its clientage only those persons unable financially to compensate for legal advice or services ~~rendered.~~ rendered, and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.

(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.

(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1."

SECTION 4. G.S. 84-4.1(5) reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of and in good standing in that state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

. . . . . .

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this ~~State~~ State, has agreed to be responsible for filing a

registration statement with the North Carolina State Bar, and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State."

. . . . . .

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

HOUSE BILL 1487:
Pro Bono Emeritus Lawyers

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 20, 2007
Introduced by:	Reps. Blue, Stam	**Summary by:**	Ben Popkin
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 1487 amends the law governing membership and privileges in the North Carolina State Bar to allow inactive lawyers to represent indigent clients on a pro bono basis under the supervision of a nonprofit corporation. HB 1487 would require that inactive members of the Bar must have obtained a license to practice law in the State.

The bill also clarifies that active members must satisfy all other obligations of membership in addition to payment of membership dues.

CURRENT LAW:

Under current law, membership in the North Carolina State Bar is divided into two classes. Active members are those who have obtained a license to practice law in the State, including justices and judges of any state or federal court in the State. All active members must pay the annual membership fee, which may not exceed $300.00 and a mandatory $50.00 surcharge to support the appellate judicial campaign fund.

Inactive members are those who have been found by the State Bar Council to be not engaged in the practice of law or holding a position in which they would be called upon to give legal advice. Inactive members are not required to pay membership dues.

BILL ANALYSIS:

House Bill 1487 adds a provision that would authorize the Council to allow otherwise inactive members to represent indigent clients on a pro bono basis under the supervision of a nonprofit corporation and add the requirement that inactive members of the Bar must have obtained a license to practice law in the State.

The bill also clarifies that active members must satisfy all other obligations of membership in addition to payment of dues. This includes meeting the continuing legal education requirements.

EFFECTIVE DATE:

This act is effective when it becomes law.

Karen Cochrane-Brown, counsel to House Judiciary II, substantially contributed to this summary.

H1487e2-SMRD

Principal Clerk ____
Reading Clerk ____

Please note time

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 19, 2007	10:00 AM to 12 Noon	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1659	Criminal History Checks/DPI Employees.	Representative Fisher
HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected Notice – Bill Change

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 19, 2007	10:00 AM - 12 Noon	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1659	Criminal History Checks/DPI Employees.	Representative Fisher
HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

2nd Corrected Notice – HB 316, 947, & 1372 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 19, 2007	10:00 AM - Noon	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 316	Amend Civil Procedure Rule 45.	Representative Daughtry
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 947	NC Foreclosure/Landlord Tenant Laws.	Representative Blue Representative Glazier
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1372	Organ and Tissue Donation/The Heart Prevails.	Representative Folwell Representative Clary Representative Holliman Representative Wainwright
HB 1659	Criminal History Checks/DPI Employees.	Representative Fisher
HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

3rd corrected notice – HB 316 removed

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 19, 2007	10:00 AM - Noon	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 947	NC Foreclosure/Landlord Tenant Laws.	Representative Blue Representative Glazier
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1372	Organ and Tissue Donation/The Heart Prevails.	Representative Folwell Representative Clary Representative Holliman Representative Wainwright
HB 1659	Criminal History Checks/DPI Employees.	Representative Fisher
HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, July 19, 2007, 10:00 AM - Noon
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 316	Amend Civil Procedure Rule 45.	Representative Daughtry
HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 947	NC Foreclosure/Landlord Tenant Laws.	Representative Blue Representative Glazier
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1372	Organ and Tissue Donation/The Heart Prevails.	Representative Folwell Representative Clary Representative Holliman Representative Wainwright
HB 1659	Criminal History Checks/DPI Employees.	Representative Fisher
HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Presentations

Other Business

Adjournment

Senate Judiciary II (Criminal) Committee
Thursday, July 19, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 767	ATV Use for Emergencies.-AB	Representative Sutton
HB 943	Updating of Jury List.	Representative Lewis
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1659	Criminal History Checks/DPI Employees.	Representative Fisher
HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Presentations

Other Business

Adjournment

Senate Judiciary II (Criminal) Committee
Thursday, July 19, 2007, 10:00 AM - Noon
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 767	ATV Use for Emergencies.-AB	Representative Sutton
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HB 1707	Detention Officers Courthouse Firearms.	Representative McLawhorn

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 17, 2007

Senator Austin Allran, Vice-Chairman, called the Senate Judiciary II Committee to order on July 17, 2007, with ten members present. Senator Allran introduced pages Tori Lucas, Courtney Kivett, Mary Rudolf, Reid Soles and Olivia Schoeff and thanked them for their service.

HB 767 (ATV Use for Emergencies.-AB) Senator Allran noted that the bill had previously passed the Committee and asked for a motion to recall it. Senator Jones so moved, all voted and the motion passed. Senator Queen moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Sutton was recognized to explain the bill. Senator Jones' question was answered by Representative Sutton, Ms. Jennifer McGinnis, Staff Attorney and Ms. Rose Williams, representing the Department of Insurance. Senator Queen moved for a favorable report. All voted and the motion carried.

HB 1372 (Organ and Tissue Donation/The Heart Prevails.) Representative Jones moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Folwell was recognized to explain the bill. Representative Folwell presented an amendment and moved that it be accepted. All voted and the motion carried. Senator Apodaca moved for a favorable report, as amended, unfavorable to the original bill and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

HB 1659 (Criminal History Checks/DPI Employees.) Senator Berger moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Fisher was recognized to explain the bill. Ms. Kory Goldsmith, Staff Attorney, answered the question from Senator Jones. Senator Apodaca moved for a favorable report with a referral to Finance. All voted and the motion carried.

HB 1707 (Detention Officers Courthouse Firearms.) Senator Kerr was recognized to explain the bill for Representative McLawhorn. Mr. Eddie Caldwell, representing the North Carolina Sheriffs' Association, gave additional explanation. Senator Kerr, Ben Popkin, Staff Attorney and Mr. Caldwell answered Senator Jones' question. Senator Queen moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 19, 2007

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

FAVORABLE

H.B. **1707** Detention Officers Courthouse Firearms.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, July 23, 2007

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **767** ATV Use for Emergencies.-AB

Draft Number:	PCS 70597
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) **1372** Organ and Tissue Donation/The Heart Prevails.

Draft Number:	PCS 80475
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1659** Criminal History Checks/DPI Employees.

Draft Number:	PCS 70595
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Monday, July 23, 2007

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **767** ATV Use for Emergencies.-AB

Draft Number:	PCS 70597
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) **1659** Criminal History Checks/DPI Employees.

Draft Number:	PCS 70595
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1372** Organ and Tissue Donation/The Heart Prevails.

Draft Number:	PCS 80475
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 19, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	N.C. DOI
Joe McClure	McClees INC
Ruth Dorgner	SBE
Jack Stone	DPI Personnel
Landon J. Adams	NCEU
Kevin Daly	ACLU-NC
Jon Carr	Jordan Price
Lisa Price	North Carolinians Against Gun Violence
Alastair Macaulay	NCHSA
Lisa Martin	NC Home Builders
Barbara Moore	NC Conference of Clerks of Sup. Ct.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 19, 2007
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Judy McConnell	IOG
Audrey Galloway	NCGV Board
Burton J. Mattice	Carolina Donor Service
Jeannine M. Sato	Carolina Donor Services
Steve Woods	NC Farm Bureau
Allen Hammond	App Folwell
Johnny Kitts	MWC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 767*

Committee Substitute Favorable 4/5/07
Committee Substitute #2 Favorable 4/18/07

Short Title: ATV Use for Emergencies.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS AND ALL FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO ALLOW CERTAIN MUNICIPAL AND COUNTY EMPLOYEES CURRENTLY AUTHORIZED TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES TO CONTINUE; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers enforcing the laws of the State may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency or under the direct control of the incident commander, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on public highways where the speed limit is 35 miles per hour or less and may operate motorized all-terrain

vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.**

(a) Municipal and county employees may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on public highways where the speed limit is 35 miles per hour or less. Municipal and county employees may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only."

SECTION 3. S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, Section 36 of S.L. 2006-264, and S.L. 2007-4 are repealed.

SECTION 4. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance."

SECTION 5. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 943

Committee Substitute Favorable 4/10/07

Short Title: Updating of Jury List. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE REGISTRAR TO ASSIST COUNTY JURY COMMISSIONS IN UPDATING THEIR LISTS OF PROSPECTIVE JURORS BY PROVIDING A LIST OF RESIDENTS OF EACH COUNTY WHO HAVE DIED RECENTLY; AND TO EXCLUDE FROM THE LISTS PROVIDED BY THE COMMISSIONER OF MOTOR VEHICLES TO COUNTY JURY COMMISSIONS THE NAMES OF PERSONS WHOSE DRIVERS LICENSES HAVE BEEN EXPIRED FOR AT LEAST EIGHT YEARS AND WHO HAVE BEEN INACTIVE VOTERS FOR AT LEAST FOUR YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2(b) reads as rewritten:

"(b) In preparing the list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121. The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable."

SECTION 2. Article 4 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-121. List of deceased residents for county jury commission.**

The State Registrar shall provide to each county's jury commission an alphabetical list of all residents of that county who have died in the two years prior to July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the county who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the jury commission."

SECTION 3. G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been ~~canceled.~~canceled, except that the list shall not include the name of any formerly licensed driver whose license is expired and has not been renewed for eight years or more. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 4. G.S. 163-82.11(e) reads as rewritten:

"(e) Cooperation on List for Jury Commission. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for four years or more."

SECTION 5. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 767*

Committee Substitute Favorable 4/5/07

Committee Substitute #2 Favorable 4/18/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H767-CSRI-25 [v.1]

7/17/2007 5:09:26 PM

Short Title: ATV Use for Emergencies.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL LAW ENFORCEMENT OFFICERS AND ALL FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERSONNEL THROUGHOUT THE STATE TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES; TO ALLOW CERTAIN MUNICIPAL AND COUNTY EMPLOYEES CURRENTLY AUTHORIZED TO USE ALL-TERRAIN VEHICLES ON SOME PUBLIC HIGHWAYS WHILE ACTING IN THE COURSE AND SCOPE OF THEIR DUTIES TO CONTINUE; TO REPEAL LOCAL ACTS ON THE SUBJECT; AND TO MANDATE THAT ATV SAFETY COURSES BE APPROVED BY THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.23. Motorized all-terrain vehicles of law enforcement officers and fire, rescue, and emergency medical services permitted on certain highways.**

(a) Law enforcement officers acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on: (i) public

highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge."

SECTION 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-171.24. Motorized all-terrain vehicle use by employees of listed municipalities and counties permitted on certain highways.**

(a) Municipal and county employees may operate motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the agency, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(c) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights, and a horn.

(d) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(e) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(f) This section applies to the Towns of Ansonville, Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Davidson, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, North Topsail Beach, Oakboro, Ocean Isle Beach, Pine Knoll Shores, Stanley, Surf City, Sylva, Topsail Beach, and Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only."

SECTION 3.(a) S.L. 2004-108, Section 1 of S.L. 2005-305, S.L. 2006-25, Sections 1 and 2 of S.L. 2006-116, Section 1 of S.L. 2006-166, Section 36 of S.L. 2006-264, and S.L. 2007-4 are repealed.

SECTION 3.(b) G.S. 20-114.3 is repealed.

SECTION 4. G.S. 20-171.20 reads as rewritten:

"**§ 20-171.20. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety ~~Institute.~~ Institute or by another all-terrain vehicle safety course approved by the Commissioner of Insurance. The North Carolina Community College System is authorized to provide all-terrain vehicle safety training, approved by the Commissioner, to persons less than 18 years of age."

SECTION 5. This act becomes effective October 1, 2007.

HOUSE BILL 767:
ATV Use for Emergencies.-AB

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 19, 2007
Introduced by:	Rep. Sutton	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to Third Edition H767-CSRI-25		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 767 would: (i) authorize all law enforcement officers, fire, rescue, and emergency medical personnel, as well as municipal and county employees of listed local governments to operate all-terrain vehicles (ATVs) on specified public highways while acting in the course and scope of their duties; and (ii) require that ATV safety courses be approved by the Commissioner of Insurance, and authorize the North Carolina Community College system to provide such courses.***

[As introduced, this bill was identical to S785, as introduced by Sen. Kerr, which is currently in Senate Judiciary II (Criminal).]

CHANGES MADE BY PCS: A PCS for this bill was heard in Senate Judiciary II on July 12, 2007, and given a favorable report. The only change from that version of the PCS to the PCS currently under consideration (H767-CSRI-25) is that several municipalities (Ansonville, Davidson, Franklin, Murphy, and Sylva) have been added. These municipalities were included in another House Bill, HB 1136. If both HB 767 and HB 1136 are enacted, HB 767 would ultimately result in a repeal of the provisions enacted by HB 1136, thus the PCS under consideration includes the municipalities sought to be added by HB 1136.

CURRENT LAW: Several local laws, enacted beginning in 2004, authorize law enforcement officers, municipal employees, and county employees to use ATVs on public highways with speeds limits of 35 mph or less, in the course of their duties.

These local laws are exceptions to the general State law, which requires vehicles intended to be operated on the highways of the State to be registered (G.S. 20-50, -52), and provides that operation of a vehicle on the highways of the State without proper registration constitutes a Class 2 misdemeanor (G.S. 20-111).

G.S. 14-159.3(b) defines a motorized all terrain vehicle as "a two or more wheeled vehicle designed for recreational off-road use".

In addition, current State law requires every ATV operator born on or after January 1, 1990 to take a safety course and possess a safety certificate indicating completion of the course.

BILL ANALYSIS: The PCS for House Bill 767 would:

- Authorize **all law enforcement officers** to operate unregistered ATVs owned or leased by the agency or under the direct control of the incident commander, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.

- Authorize **all fire, rescue, and emergency medical personnel** to operate unregistered ATVs owned or leased by the agency, or under the direct control of the incident commander, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.
- Authorize **municipal and county employees only in currently authorized areas** to operate unregistered all-terrain vehicles owned or leased by the agency, on public highways with speed limits of 35 mph or less, and on non-fully controlled access highways with higher speed limits for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less. This section would apply to the Towns of Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Duck, Emerald Isle, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, Oakboro, Ocean Isle Beach, North Topsail Beach, Pine Knoll Shores, Stanley, Surf City, Topsail Beach, and Stanley, Wrightsville Beach, the Cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain and Mount Holly, Mountain, Mount Holly, and Rockingham and the Counties of Cleveland, Currituck, Gaston, Surry, and Wilkes only.
- Specify that the requirements of Part 10C of Article 3 of Chapter 20, Operation of All-Terrain Vehicles, apply to use of ATVs under this bill (age, passenger, brakes, mufflers, spark arrester, eye protection, helmet, DWI, reckless operation, use of headlights).
- Require operable front and rear lights, horn, observation of posted speed limits, and that the operator carry ID. Would prohibit exceeding the manufacturer's recommended speed.
- Provide that a penalty for violation of these new provisions would constitute an infraction.
- Repeal G.S. 20-114.3 (Law enforcement and municipal employee motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.), and all local acts on this subject.
- Require the Commissioner of Insurance to approve required all-terrain vehicle safety courses and authorize the North Carolina Community College system to provide such courses.

EFFECTIVE DATE: This PCS would become effective October 1, 2007.

Giles S. Perry, counsel to House Transportation, substantially contributed to this summary.

H0767e3-SMRI-CSRI-22

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1372

Committee Substitute Favorable 5/2/07

Senate Health Care Committee Substitute Adopted 6/20/07

Short Title: Organ & Tissue Donation/The Heart Prevails. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED UNIFORM ANATOMICAL GIFT ACT; TO PROVIDE THAT THE DECISION TO HAVE THE HEART SYMBOL ON ONE'S DRIVERS LICENSE IS LEGALLY SUFFICIENT CONSENT TO ORGAN DONATION UNLESS REVOKED BY THE DONOR; TO IMPROVE DONOR OR PROSPECTIVE DONOR ONLINE ACCESS TO INDICATE OR REVOKE ORGAN AND TISSUE DONATION; AND TO MAKE CONFORMING CHANGES TO OTHER AFFECTED GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 3A. Revised Uniform Anatomical Gift Act.

"**§ 130A-412.3. Short title.**

This Part may be cited as the Revised Uniform Anatomical Gift Act.

"**§ 130A-412.4. Definitions.**

The following definitions apply in this Part:

(1) "Adult" means an individual who is at least 18 years of age.

(1a) "Advanced directive" includes all of the following:

a. A health care power of attorney under G.S. 32A-16.

b. A record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

c. A declaration of a desire for a natural death as provided under Article 23 of Chapter 90 of the General Statutes.

(2) "Agent" means an individual:

a. Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

b. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Body part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(5) "Decedent" means a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this Article, a fetus.

(6) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to whom an anatomical gift could pass under G.S. 130A-412.13.

(7) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a drivers license, identification card, or donor registry.

(8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

(9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Drivers license" means a license or permit issued by the North Carolina Department of Transportation, Division of Motor Vehicles, to operate a vehicle, whether or not conditions are attached to the license or permit.

(11) "Eye bank" means an entity that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(12) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12a) "Health care decision" means any decision made regarding the health care of the prospective donor.

(13) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(14) "Identification card" means an identification card issued by the North Carolina Department of Transportation, Division of Motor Vehicles.

(15) "Know" means to have actual knowledge.

(16) "Minor" means an individual who is under 18 years of age.

(17) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(18) "Parent" means a parent whose parental rights have not been terminated.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's body part has been or is intended to be transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under G.S. 130A-412.9 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or body part.

(27) "Sign" means, with the present intent to authenticate or adopt a record:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

"**§ 130A-412.5. Applicability.**

This act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

"**§ 130A-412.6. Who may make an anatomical gift before donor's death.**

Subject to G.S. 130A-412.10, an anatomical gift of a donor's body or body part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in G.S. 130A-412.7 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

a. Emancipated; or

b. Authorized under State law to apply for a drivers license because the donor is at least 16 years of age;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian.

"**§ 130A-412.7. Manner of making anatomical gift before donor's death.**

(a) A donor may make an anatomical gift by any of the following methods:

(1) By authorizing that a statement or symbol be imprinted on the donor's drivers license or identification card indicating that the donor has made an anatomical gift. Anatomical gifts made by this method shall not include a donation of tissue or the donor's body.

(2) In a will.

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

(4) As provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Revocation, suspension, expiration, or cancellation of a drivers license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

"**§ 130A-412.8. Amending or revoking anatomical gift before donor's death.**

(a) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may amend or revoke an anatomical gift by:

(1) A record signed by:

a. The donor;

b. The other person; or

c. Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to sub-subdivision c. of subdivision (1) of subsection (a) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

"**§ 130A-412.9. Refusal to make anatomical gift; effect of refusal.**

(a) An individual may refuse to make an anatomical gift of the individual's body or body part by:

(1) A record signed by:

a. The individual; or

b. Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to sub-subdivision b. of subdivision (1) of subsection (a) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to G.S. 130A-412.7 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in G.S. 130A-412.10(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or body part bars all other persons from making an anatomical gift of the individual's body or body part.

"**§ 130A-412.10. Preclusive effect of an anatomical gift, amendment, or revocation.**

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or body part if the donor made an anatomical gift of the donor's body or body part under G.S. 130A-412.7 or an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8.

(b) A donor's revocation of an anatomical gift of the donor's body or body part under G.S. 130A-412.8 is not a refusal and does not bar another person specified in G.S. 130A-412.6 or G.S. 130A-412.11 from making an anatomical gift of the donor's body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or body part under G.S. 130A-412.7 or an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8, another person may not make, amend, or revoke the gift of the donor's body or body part under G.S. 130A-412.12.

(d) A revocation of an anatomical gift of a donor's body or body part under G.S. 130A-412.8 by a person other than the donor does not bar another person from making an anatomical gift of the body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part for one or more of the purposes set forth in G.S. 130A-412.6 is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or any other person under G.S. 130A-412.7 or G.S. 130A-412.12.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or body part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

"**§ 130A-412.11. Who may make an anatomical gift of decedent's body or body part.**

(a) Subject to subsections (b) and (c) of this section, and unless barred by G.S. 130A-412.9 or G.S. 130A-412.10, an anatomical gift of a decedent's body or body part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under G.S. 130A-412.6(2) immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) An adult who exhibited special care and concern for the decedent;

(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under G.S. 130A-412.13 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

"§ 130A-412.12. Manner of making, amending, or revoking anatomical gift of decedent's body or body part.

(a) A person authorized to make an anatomical gift under G.S. 130A-412.11 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under G.S. 130A-412.11 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under G.S. 130A-412.11 may be:

(1) Amended only if a majority of the reasonably available members agrees to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agrees to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a body part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

"§ 130A-412.13. Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the body part;

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) of this section cannot be transplanted into the individual, the body part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific body parts or of all body parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the body part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the body part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the body part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the body part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific body parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section, the following rules apply:

(1) If the body part is an eye, the gift passes to the appropriate eye bank.

(2) If the body part is tissue, the gift passes to the appropriate tissue bank.

(3) If the body part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent's body or body part is not used for transplantation, therapy, research, or education, then custody of the body or body part passes to the person under obligation to dispose of the body or body part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under G.S. 130A-412.7 or G.S. 130A-412.12 or if the person knows that the decedent made a refusal under G.S. 130A-412.9 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in this act affects the allocation of organs for transplantation or therapy.

"**§ 130A-412.14. Search and notification.**

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

"**§ 130A-412.15. Delivery of document of gift not required; right to examine.**

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under G.S. 130A-412.13.

"**§ 130A-412.16. Rights and duties of procurement organization and others.**

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the North Carolina Department of Transportation, Division of Motor Vehicles, and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the North Carolina Department of Transportation, Division of Motor Vehicles, to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this Part, at any time after a donor's death, the person to which a body part passes under G.S. 130A-412.13 may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

(e) Unless otherwise prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in G.S. 130A-412.11 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to G.S. 130A-412.13(i) and G.S. 130A-412.25, the rights of the person to which a body part passes under G.S. 130A-412.13 are superior to the rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this Part, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a body part, the person to which the body part passes under G.S. 130A-412.13, upon the death of the donor and before embalming, burial, or cremation, shall cause the body part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated body part from the body of a donor that the physician or technician is qualified to remove.

"**§ 130A-412.17. Coordination of procurement and use.**

Each hospital in this State shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

"**§ 130A-412.18. Sale or purchase of body parts prohibited.**

(a) Except as otherwise provided in subsection (b) of this section, a person, that for valuable consideration, knowingly purchases or sells a body part for transplantation or therapy if removal of a body part from an individual is intended to occur after the individual's death commits a Class H felony and upon conviction is subject to a fine not exceeding fifty thousand dollars ($50,000) or imprisonment not exceeding five years, or both.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part.

"**§ 130A-412.19. Other prohibited acts.**

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a

document of gift, or a refusal commits a Class H felony and upon conviction is subject to a fine not exceeding fifty thousand dollars ($50,000) or imprisonment not exceeding five years, or both.

"**§ 130A-412.20. Immunity.**

(a) A person that acts with due care in accordance with this Part or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this Part, a person may rely upon representations of an individual listed in subdivisions (2) through (8) of G.S. 130A-412.11(a) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

"**§ 130A-412.21. Law governing validity; choice of law as to execution of document of gift; presumption of validity.**

(a) A document of gift is valid if executed in accordance with:

(1) This Part;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this State governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

"**§ 130A-412.22. Donor registry.**

The online Organ Donor Registry Internet site established pursuant to G.S. 20-43.2 shall be the State donor registry for anatomical gifts made pursuant to this Part. Requirements for maintenance and use of the State donor registry shall be as provided under G.S. 20-43.2.

"**§ 130A-412.23. Effect of anatomical gift on advanced directive.**

If a prospective donor has a declaration or advanced health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor unless the declaration expressly provides to the contrary.

"**§ 130A-412.24. Cooperation between a medical examiner and the procurement organization.**

(a) The medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b) If a medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose

body is under the jurisdiction of the medical examiner and a postmortem examination is going to be performed, unless the medical examiner denies recovery in accordance with G.S. 130A-412.25, the medical examiner or designee shall conduct a postmortem examination of the body or the body part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A body part may not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation, therapy, research, or education unless the body part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a medical examiner from performing the medicolegal investigation upon the body or body parts of a decedent under the jurisdiction of the medical examiner.

(d) As used in this section and G.S. 130A-412.25, "medical examiner" includes the Chief Medical Examiner, a county medical examiner, or a designee of either.

"**§ 130A-412.25. Facilitation of anatomical gift from decedent whose body is under the jurisdiction of a medical examiner.**

(a) Upon request of a procurement organization, a medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is or will come under the jurisdiction of the medical examiner. If the decedent's body or body part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

(b) The medical examiner may conduct a medicolegal examination including physical examination of a donor or prospective donor and review of all medical records, laboratory test results, X-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner or whose body would be under the medical examiner's jurisdiction upon death and that the medical examiner determines may be relevant to the investigation.

(c) A person that has any information requested by a medical examiner pursuant to subsection (b) of this section shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of body parts for the purpose of transplantation, therapy, research, or education.

(d) If an anatomical gift has been or might be made of a body part of a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is not required, or the medical examiner determines that a postmortem examination is required but that the recovery of the body part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the body part from the decedent for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift of a body part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the body part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the medical examiner may deny or allow the recovery.

(f) If the medical examiner or designee allows recovery of a body part under subsection (d) or (e) of this section, the procurement organization shall provide the medical examiner or designee with a record describing the condition of the body part signed by the physician or technician who removes the body part and any other information and observations that would assist in the postmortem examination."

SECTION 2. G.S. 20-43.2 reads as rewritten:

"**§ 20-43.2. Internet access to organ donation records by organ procurement organizations.**

(a) The Department of Transportation, Division of Motor Vehicles, shall establish and maintain a statewide, online Organ Donor Registry Internet ~~site.~~site (hereafter "Donor Registry"). The purpose of the ~~Organ Donor Internet site~~ Donor Registry is to enable federally designated organ procurement organizations and eye banks to have ~~timely access to~~access 24 hours per day, seven days per week to obtain relevant information on the Donor Registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift through a symbol on the donor's or prospective donor's drivers license, special identification card, or other manner. ~~the names of individuals who have stated to the Division the individual's intent to be an organ donor and have an organ donation symbol on the individual's drivers license or special identification card.~~ The data available on the ~~Organ Donor Internet site~~ Donor Registry shall be limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license number. The Division of Motor Vehicles shall ensure that only federally designated organ procurement organizations and eye banks operating in this State have access to the ~~Organ Donor Internet site~~Donor Registry in read-only format. The Division of Motor Vehicles shall enable federally designated organ procurement organizations and eye banks operating in this State to have online access in read-only format to the ~~Organ Donor Internet site~~Donor Registry through a unique identifier and password issued to the organ procurement organization or eye bank by the Division of Motor Vehicles. ~~The read-only information from the Organ Donor Internet site will be used for the sole purpose of seeking consent from the individual's next of kin for organ, tissue, or eye donation.~~Employees of the Division who provide access to or disclosure of information in good-faith compliance with this section are not liable in damages for access to or disclosure of the information.

(b) When accessing and using information obtained from the ~~Organ Donor Internet site,~~Donor Registry, federally designated organ procurement organizations and

eye banks shall comply with the requirements of Part ~~3~~3A of Article 16 of Chapter 130A of the General Statutes.

(c) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(d) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the State. Any such registry must comply with subsections (b) and (c) of this section."

SECTION 3. The North Carolina Department of Transportation, Division of Motor Vehicles, in cooperation with the License to Give Trust Fund Commission, shall use available grant-in-aid funds from the State and federal governments and other sources to enhance online access such that donors and prospective donors may update, amend, or revoke information on the donor's or prospective donor's drivers license or donor card.

SECTION 4. This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(a) of that act, 15 U.S.C. § 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

SECTION 5.(a) G.S. 130A-410, 130A-411, 130A-412, 130A-412.1, and 130A-412.2 are recodified under Part 3A of Article 16 of Chapter 130A of the General Statutes, as enacted by this act, as G.S. 130A-412.26, 130A-412.27, 130A-412.28, 130A-412.29, and 130A-412.30 respectively.

SECTION 5.(b) Except as provided in subsection (a) of this section, Part 3 of Article 16 of Chapter 130A of the General Statutes is repealed.

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 1372:
Organ & Tissue Donation/The Heart Prevails

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 19, 2007
Introduced by:	Reps. Folwell, Holliman, Clary, Wainwright	**Summary by:**	Kory Goldsmith
Version:	PCS to Third Edition H1372-CSRC-60		Committee Counsel

SUMMARY: ***House Bill 1372 would enact the Revised Uniform Anatomical Gift Act (UAGA) as drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2006. The most significant changes are as follows:***

- ***Individual choice to make an anatomical gift, as evidenced by a 'heart' symbol on the person's drivers' license, will be sufficient to establish intent to donate without verifying choice with another person.***
- ***Unless specified otherwise, priority will be given to use anatomical gifts for transplantation or therapy, if suitable, then for use for research or education.***
- ***Directs hospitals to enter into 'agreements or affiliations' with procurement organizations.***
- ***Creates a Class H felony for sale or purchase of body parts, or for falsification of donor records.***

The Proposed Committee Substitute differs from the 3rd Edition as follows:

- ***Makes authority to make an anatomical gift by an agent under a health care power of attorney consistent with existing law.***
- ***Removes a section that attempted to deal with apparent conflicts between prospective donations and advance directives. The provision has been questioned by medical ethicists in other states.***
- ***Makes confirming changes to related statutes.***

CURRENT LAW: Part 3 of Article 16 of Chapter 130A of the General Statutes contains the Uniform Anatomical Gift Act (UAGA), based on the draft of the Act produced by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1968 and enacted by the North Carolina General Assembly in 1969. See the Bill Analysis below for specific differences between existing law and the proposed legislation.

BILL ANALYSIS: The following is a section by section analysis of the proposed legislation:

Section 1 – Creates a new Part 3A in Article 16 of Chapter 130A

§ 130A-412.3 – Short title would be the "Revised Uniform Anatomical Gift Act.

§ 130A-412.4 – Expands the number of defined terms. Some new terms include:

"Anatomical Gift" – A donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

"Body part" – An organ, an eye, or tissue of a human being, but not the whole body. *Current law defines "part" as organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.*

"Disinterested witness" – A person other than the spouse, child, parent, sibling, grandchild, grandparent or guardian of the person who makes, amends, revokes or refuses to make a donation. It also includes a person who has exhibited special care and concern for the individual.

"Guardian" is a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual, but not a guardian ad litem.

"Know" means actual knowledge.

"Record" means information stored in a tangible medium or stored in an electronic medium and capable of being retrieved.

"Tissue" means a part of a human body other than an organ or an eye, but not blood unless donated for research or education.

§ 130A-412.5 – Applicability – the Act would be applicable to a gift, amendment, revocation or refusal regardless of when it is made. *This provision makes the changes in the Revised Act applicable to existing documents, including drivers licenses.*

§ 130A-412.6 – Who may make an anatomical gift prior to donor's death – The donor may make an anatomical gift if: the donor is an adult, the donor is an emancipated minor, or the donor is a minor who is 16 or 17 years old[1]. An agent of the donor may make an anatomical gift, unless the health care power of attorney prohibits the agent from making anatomical gifts. The parent of an unemancipated minor may make an anatomical gift, as may the guardian of the donor. *Existing law provides that, during the life of the donor, only a donor who is at least 18 years of age may make an anatomical donation*[2].

§ 130A-412.7 – Manner of making anatomical gift before donor's death

1. Donor may make a gift of: (a) organs or eyes by including a symbol on a drivers license or identification care, (b) of any body part or the donor's body by will, or (c) during a terminal illness or injury by any form of communication to at least 2 adults, one of which must be a disinterested witness.

2. A donor or other authorized person may make a donation by: (a) a donor card, (b) a signed record, or (c) being included on a donor registry.

Current law provides a donation may be made by will. The donation may also be made by a document other than a will, provided the document is signed by the donor and two witnesses.

§ 130A-412.8 – Amending or revoking an anatomical gift.

An anatomical gift may be amended or revoked by the donor or any person authorized to make a donation. The revocation can be made by a record signed by the donor or a person authorized to make a donation, by a later-executed document of gift, by the destruction or cancellation of the document of gift, or a portion of a document of gift. A donor may amend or revoke a donation that is not made by will by any form of communication during a terminal illness or injury, if the communication is made to at least 2 adults, 1 of whom is a disinterested witness. *Current law allows an amendment or revocation by: (a) delivery of a signed statement to the donee, (b) an oral statement made in the presence of 2*

[1] However, a parent of an unemancipated minor could revoke or amend either an anatomical donation or a refusal made by the minor.
[2] G.S. 130A-404(a)

persons and communicated to the donee, (c) a statement during a terminal illness or injury made to an attending physician and communicated to the donee; or a signed document made known to the donee. If the donation has not been delivered to the donee, the donation may be amended or revoked by destruction, cancellation or mutilation of the document and all executed copies.

§ 130A-412.9 – Refusal to make anatomical gift; effect of refusal

A refusal is a record that expressly states an intent to bar other persons from making an anatomical gift. It can be made by a signed record by the donor or a person acting at the direction of the donor, by the donor's will, or any other form of communication to at least 2 adults, one of whom is a disinterested witness and made during a terminal illness or injury. A person may amend or revoke a refusal by any methods of making a refusal, by making an anatomical gift, or by destroying or cancelling the record evidencing the refusal. An unrevoked refusal bars other individuals from making an anatomical gift. *Current law allows the revocation of an anatomical gift in a will by any method that is allowed to revoke or amend a will.*

§ 130A-412.10 – Preclusive effect of an anatomical gift, amendment or revocation.

A person other than the donor who is authorized to make an anatomical donation may not make, amend or revoke a donation if the donor made or amended a donation during the donor's lifetime. A donor's revocation is not considered a refusal and does not preclude another person authorized to make a donation from doing so. If an authorized person (other than the donor) makes an anatomical gift, the gift may not be amended or revoked by another person authorized to make an anatomical gift. If one of those individuals revokes the gift, another person authorized to make the gift may do so. An anatomical gift of a particular body part does not preclude gifts of other body parts at a later time by the donor or authorized person. An anatomical donation for a particular purpose is not a limitation on the making of other donations for other purposes.

§ 130A-412.11 – Who may make an anatomical gift of the decedent's body or body parts. – Any of the following persons, in descending order, have the authority to make an anatomical gift of the decedent's body or body parts after the decedent has died: (1) an agent who could have made a donation during the decedent's life, (2) the decedent's spouse, (3) adult children of the decedent, (4) parents of the decedent, (5) adult siblings of the decedent, (6) adult grandchildren of the decedent, (7) grandparents of the decedent, (8) an adult who has exhibited special care and concern for the decedent. (9) persons acting as guardian at the time of death, and (10) other persons with authority to dispose of decedent's body. *Current law gives this authority to (1) the health care agent with authority to make anatomical gifts, (2) the spouse, (3) an adult child, (4) either parent, (5) an adult sibling, (6) the donor's guardian, (7) any other person authorized to dispose of the body.*

§ 130A-412.12 – Manner of making, amending, or revoking anatomical gift of decedent's body or body part. – An anatomical gift made after the donor's death may be made by a signed document or by an oral communication that is reduced to a record. This donation may be amended or revoked by a signed document. A revocation is effective only if the party that is going to harvest the body part has actual knowledge of the revocation or amendment prior to making an incision or invasive procedure.

§ 130A-412.13 – Persons who may receive anatomical gift; purpose of gift. – if the purpose of the gift is research or education, the recipient must be a hospital, medical school or dental school, college or university, or organ procurement organization. An individual may be designated to receive the gift if that individual will also be the recipient of the body part. An eye or tissue bank may also receive an anatomical gift. A gift made by a symbol on a drivers license may only be used for transplantation or therapy. If the body part is an eye, it must go to the appropriate eye bank. If the body part is an organ, it

must go to the appropriate organ procurement organization. A person may not accept an anatomical gift if the person knows the gift was not made by the authorized methods. *Current law allows the following persons to receive an anatomical gift: a hospital, surgeon or physician for education or research or transplantation or therapy; a medical or dental school to advance education, research, or therapy; a bank or storage facility for medical or dental research; a specified individual for therapy or transplantation; the Commission for anatomy for distribution for studying anatomy.*

§ 130A-412.14 – Search and notification. A hospital or law enforcement office who reasonably believes an individual is dead or near death must make a reasonable search of that individual to locate either a document of gift or a refusal. There is no criminal liability for failing to make this search.

§ 130A-412.15 – Delivery of document of gift not required. An anatomical gift does not have to be delivered during the donor's lifetime in order to be effective.

§ 130A-412.16 – Rights and duties of procurement organizations. If a person at or near death is referred to a procurement organization, that organization must make a reasonable search of DMV records and other donor registries in the area to determine whether the donor has made an anatomical gift. The organization may make a reasonable examination to determine medical suitability of the body part for transplantation, therapy, research, or education. Measures necessary to ensure medical suitability may not be withdrawn during this period of examination unless the donor has expressed a contrary intent. The examination for medical suitability includes an examination of all medical and dental records of the donor. Neither the physician who attends the decedent at death who determines the time of death may participate in the harvesting procedures.

§ 130A-412.17 – Coordination of procurement and use – Each hospital in the State must enter into agreements or affiliations with procurement organizations for the coordination of procurement.

§ 130A-412.18. Sale or purchase of body parts prohibited – A person who knowingly sells or purchases a body part for transplantation or therapy is guilty of a Class H felony punishable by a fine of up to $50,000 if the removal of the body part is intended to occur after the individual's death.

§ 130A-412.19. – Other prohibited acts – It is a Class H felony punishable by a fine of up to $50,000 to intentionally falsify, conceal or destroy a document of gift, an amendment, revocation or refusal if the act is made to obtain financial gain.

§ 130A-412.20. – Immunity. – A person who acts with due care under this Part or attempts a good faith effort to do so is not liable in any civil or criminal action. A third party may rely upon representations made by individuals regarding their relationship to the donor unless the third party has actual knowledge the information is false.

§ 130A-412.21 – Choice of law; presumption of validity. – The document of gift is valid if executed in accordance with the laws of North Carolina, the laws of the state or jurisdiction where the document was executed, or the laws of any location the donor had some contact with at the time of document was executed. The laws of North Carolina shall apply to the interpretation of the document.

§ 130A-412.22. – Donor registry. – The Organ Donor Registry Internet site created under G.S. 20-43.2 shall be the State' donor registry for anatomical gifts made under this act.

§ 130A-412.23 – Cooperation between medical examiner and procurement organization. – Medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts.

§ 130A-412.24 – Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner. – Outlines the procedures for recover of a body part that is the subject of an anatomical gift when the body of the decedent is under the control of a medical examiner.

§ 130A-412.25 through § 130A-412.29 reserved for future codification.

Section 2 amends G.S. 20-43.2 to require that the Organ Donor Registry Internet site (Donor Registry) be accessible 24 hours a day, seven days a week. Personally identifiable information about a donor or prospective donor would not be used or disclosed without the express permission of the donor for any purpose other than to determine whether the donor made, amended or revoked the donation.

Section 3 recodifies portions of existing Part 3 of Article 16 of Chapter 130A and repeals those portions that are the existing Uniform Anatomical Gift Act.

Sections 4-10 make conforming changes to other statutes.

Section 11 directs DMV to work with the License to Give Trust Fund Commission to use grant-in-aid funds and other sources to enhance online access to the Donor Registry.

Section 12 provides that the act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, but not federal law regarding electronic delivery of notices.

EFFECTIVE DATE: This act becomes effective October 1, 2007.

BACKGROUND: The 2006 revision of the UAGA has been enacted in 14 states, and drafts of the revised UAGA are under consideration in 16 states. NCCUSL promulgated the first version of the UAGA in 1968 and has offered two major revisions to the Act since then, first in 1987 and then 2006. Every state has adopted at least one of the versions of the UAGA, but variation among versions enacted has led to a lack of nationwide uniformity of state laws governing organ, tissue and eye donation.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1372

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

H1372-ARC-63 [v.1]

Date July 19, ,2007

Comm. Sub. [YES]
Amends Title [NO]
H1372-CSRC-60[v.2]

Senator _____

moves to amend the bill on page 17, by rewriting line 35 to read:

"**SECTION 13.** The North Carolina General Statutes Commission ("General Statutes Commission") shall review G.S. 130A-391, G.S. 90-602, and other statutes related to organ donation to determine whether the statutes should be amended to be consistent with and conform to the Revised Uniform Anatomical Gift Act as enacted in this act. The General Statutes Commission shall make its recommendations upon the convening of the 2008 Regular Session of the 2007 General Assembly.

SECTION 14. This act becomes effective October 1, 2007.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Bill 1372: THE HEART PREVAILS

Sponsors: Representatives Folwell, Clary, Holliman, and Wainwright

The following organizations/individuals have endorsed House Bill 1372:

1. **North Carolina Hospital Association**

2. **North Carolina Medical Society**

3. **North Carolina Hospice**

4. **North Carolina Eye and Tissue Bank**

5. **North Carolina Funeral Home Examining Board**

6. **North Carolina Medical Examiner**

7. **North Carolina Department of Motor Vehicles**

8. **Various Organ Procurement Organizations**

9. **Mrs. United States of America for 2006, Shannon Devine**

10. **North Carolina Trial Lawyers**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1659
Committee Substitute Favorable 5/17/07

Short Title: Criminal History Checks/DPI Employees. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL HISTORY RECORD CHECKS OF EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE DEPARTMENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.20. Criminal history record checks of employees of and applicants for employment with the Department of Public Instruction.**

(a) Definitions. – As used in this section, the term:

(1) "Covered person" means any of the following:

a. An applicant for employment or a current employee in a position in the Department of Public Instruction.

b. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Public Instruction.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,

False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Public Instruction, the North Carolina Department of Justice may provide to the requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such request shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the requesting department shall provide to the Department of Justice a form consenting to the check, signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of Public Instruction shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked, consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Instruction shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Public Instruction shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information either department receives through the checking of the criminal history is privileged information and for the exclusive use of that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall

constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Public Instruction. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Public Instruction in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Public Instruction may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Public Instruction may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1659

Committee Substitute Favorable 5/17/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1659-CSRI-26 [v.1]

7/18/2007 10:45:24 AM

Short Title: Criminal History Checks/DPI Employees. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL HISTORY RECORD CHECKS OF EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE DEPARTMENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.21. Criminal history record checks of employees of and applicants for employment with the Department of Public Instruction.**

(a) Definitions. – As used in this section, the term:

(1) "Covered person" means any of the following:

a. An applicant for employment or a current employee in a position in the Department of Public Instruction.

b. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Public Instruction.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Public Instruction. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other

Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Public Instruction, the North Carolina Department of Justice may provide to the requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such request shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the requesting department shall provide to the Department of Justice a form consenting to the check, signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of Public Instruction shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked, consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Instruction shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Public Instruction shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the department receives through the checking of the criminal history is privileged information and for the exclusive use of the department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Public Instruction. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Public Instruction in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Public Instruction may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Public Instruction may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

SECTION 2. This act becomes effective October 1, 2007.

HOUSE BILL 1659:
Criminal History Checks/DPI Employees

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 18, 2007
Introduced by:	Rep. Fisher	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition H1659-CSRI-26		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1659 amends the law governing criminal history record checks conducted by the State Bureau of Investigation to authorize criminal history record checks for employees, applicants for employment, and contractors with the Department of Public Instruction (DPI).***

CHANGES MADE BY PCS: The PCS makes technical changes to the 2nd edition of the bill.

BILL ANALYSIS:

This bill authorizes the Department of Justice to provide criminal history record checks of DPI employees, applicants for employment, and contractors upon a request by DPI. "Criminal history" is defined as a State or federal history of conviction of a crime, whether a misdemeanor or a felony, that bears upon a covered person's fitness for employment. The bill includes a list of crimes that bear upon a person's suitability for employment.

DPI may not request a criminal history check based on a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition. If DPI requests only a State criminal history check, it must provide a consent form signed by the person to be checked. National criminal history checks are authorized for applicants who have not lived in the State during the past five years. If DPI requests a national criminal history check, it must provide the fingerprints of the person to be checked and a signed consent form. DPI must keep all information obtained confidential. The Department of Justice is authorized to charge a reasonable fee for conducting the criminal history records check.

If the record check reveals one or more convictions of one of the crimes listed in subsection (a), the conviction constitutes just cause for not employing a person or for dismissing a person from current employment. However, a conviction does not automatically prohibit employment. The bill lists a number of factors that must be considered in determining whether to deny employment.

DPI may deny employment to an applicant or dismiss a current employee for refusing to consent to the criminal history records check. The bill provides that the refusal constitutes just cause for denial of employment or dismissal. DPI may also extend a conditional offer of employment pending results of the criminal history records check.

Under current law, G.S. 114-19.6 authorizes criminal history records checks for applicants and employees of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention. This bill is very similar to that law.

Because of the fee authorized in subsection (b) of the new section 114-19.20, proposed in Section 1 of the bill, this bill must be re-referred to the Committee on Finance.

EFFECTIVE DATE: This act becomes effective October 1, 2007.

Karen Cochrane-Brown, counsel to House State Personnel, substantially contributed to this summary.

H1659e2-SMRI-CSRI-26

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

HOUSE BILL 1707

Short Title:	Detention Officers Courthouse Firearms.	(Public)
Sponsors:	Representative McLawhorn.	
Referred to:	Judiciary II.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW DETENTION OFFICERS EMPLOYED BY THE SHERIFF TO CARRY FIREARMS AT THE COUNTY COURTHOUSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3.

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3.

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry firearms.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

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

HOUSE BILL 1707:
Detention Officers Courthouse Firearms

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 18, 2007
Introduced by:	Rep. McLawhorn	**Summary by:**	Ben Popkin
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1707 would allow detention officers to carry firearms in a courthouse, if the detention officers are employed by the sheriff and are authorized by the sheriff to carry firearms.

CURRENT LAW: G.S. 14-296.4 provides that it is unlawful for any person to carry any deadly weapon not used solely for instructional or officially sanctioned ceremonial purposes, whether open or concealed, in or on the grounds of any of the following:

- State Capitol Building
- Executive Mansion
- Western Residence of the Governor
- Any building housing any court of the General Court of Justice

This law does not apply to:

- Persons that are exempted by the provisions of G.S. 14-269 (which includes: officers and enlisted personnel of the armed forces when discharged in their official duties; civil and law enforcement officers of the United States; officers and soldiers of the militia and national guard; officers of the State, county, city, town, or company police agency when acting in the discharge of official duties; and off-duty sworn law enforcement officers).
- Any person in a building housing a court of the General Court of Justice who is in possession of a weapon for evidentiary purposes, to deliver it to law enforcement, or to register it.
- State-owned rest areas, highway rest stops, and State-owned hunting and fishing reservations.

A violation of G.S. 14-269 is punishable as a Class 1 misdemeanor, for which the minimum presumptive sentence would be community punishment of 1 to 45 days and a fine at the discretion of the Court.

BILL ANALYSIS: The bill would add detention officers carrying firearms in a courthouse to the list of persons and locations exempted from the provisions of G.S. 14-269.4, when the detention officers are employed by the sheriff and are authorized by the sheriff to carry firearms, thereby allowing them to carry firearms in a courthouse.

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

Drupti Chauhan, counsel to House Judiciary II, substantially contributed to this summary.

H1707e1-SMRD

Principal Clerk ____
Reading Clerk ____

Please note time change

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 24, 2007	9:00 - 11:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 222	Armed Robbery/Apparent Firearms.	Senator Goodall
HB 316	Amend Civil Procedure Rule 45.	Representative Daughtry
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
HB 943	Updating of Jury List.	Representative Lewis
HB 947	NC Foreclosure/Landlord Tenant Laws.	Representative Blue Representative Glazier
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1366	School Violence Prevention Act.	Representative Stiller Representative Justice Representative Glazier Representative Fisher

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, July 24, 2007, 9:00 - 11:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 222	Armed Robbery/Apparent Firearms.	Senator Goodall
HB 316	Amend Civil Procedure Rule 45.	Representative Daughtry
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
HB 943	Updating of Jury List.	Representative Lewis
HB 947	NC Foreclosure/Landlord Tenant Laws.	Representative Blue Representative Glazier
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1366	School Violence Prevention Act.	Representative Stiller Representative Justice Representative Glazier Representative Fisher

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 24, 2007

Senator Jones, Vice Chair, called the Senate Judiciary II Committee to order on July 24, 2007, with thirteen members present. Senator Jones introduced the pages and thanked them for their service.

SB 222 (Armed Robbery/Apparent Firearms.) Senator Bingham moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Goodall was recognized to explain the bill. Senator Goodall answered questions from Senators Bingham and Berger. Senator Bingham moved for a favorable report, unfavorable to the original bill, with a referral to Appropriations. All voted and the motion carried.

HB 1287 (Report Denial of Some Pistol Permits.) Senator Hartsell recognized Representative Sutton to explain the bill. Ms. Lisa Price, representing North Carolinians Against Gun Violence Education Fund spoke on the bill. Mr. Jeff Rau, representing Grass Roots North Carolina and Mr. Anthony Roulette, representing the National Rifle Association, spoke in opposition to the bill. After much discussion, Senator Bingham moved for a favorable report. All voted and the motion failed.

HB 947 (NC Foreclosure/Landlord Tenant Laws.) Senator Berger moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Blue was recognized to explain the bill. Senator Atwater moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

HB 316 (Amend Civil Procedure Rule 45) Senator Queen moved to accept the Proposed Committee Substitute for purposes of discussion. Representative Daughtry was recognized to explain the bill. Representative Daughtry and Ms. Jennifer McGinnis, Staff Attorney, answered Senator Goodall's question. Senator Berger presented an amendment and moved that it be adopted. All voted and the motion carried. Senator Jacumin moved for a favorable report as amended, unfavorable to the original bill and rolled into a new committee substitute.. All voted and the motion carried.

HB 943 (Updating of Jury List.) Senator Apodaca moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Lewis was recognized to explain the bill. Ben Popkin, Staff Attorney,

gave additional explanation. Mr. Gregg Stall of the Administrative Office of the Courts, spoke on the bill. Representative Lewis and Ben Popkin answered the questions of Senators Dorsett, Kerr and East. Senator Bingham moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr.,, Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, July 25, 2007

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **222** Armed Robbery/Apparent Firearms.

Draft Number:	PCS 75446
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **316** Amend Civil Procedure Rule 45.

Draft Number:	PCS 50756
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) **943** Updating of Jury List.

Draft Number:	PCS 70600
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) **947** NC Foreclosure/Landlord Tenant Laws.

Draft Number:	PCS 30516
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **Name of Committee**

7-24-07 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gail Neely	NCGV PO Box 9204 Chapel Hill, NC
Lisa Kukla	NCGV PO Box 9204 Chapel Hill, NC
Lisa Price	NCGV " "
Paul Stock	NCBA
Bill Rowe	NC Justice Center
Paula A. Wolf	El Pueblo, Inc.
Alison Kiser	Planned Parenthood of Central NC
John [illegible]	NC Family Policy Council
Marie Strickland	Rep. David Lewis
Robert L Youngblood	GRNC 4231 Hoover Rd Wilson 27893
Gregg Swensen	GRNC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-24-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Rau	Grass Roots NC
Sohi Mehdi	600 office
Jeff Owen	NCBA
Janet Pelmgrant	citizen
Michael Patrick	NC Bar Assn Litigation Section
Courtney Denning	NC Bar Assoc.
Katherine Joyce	NCASA
Jim Stegall	U.C.P.S.
Christine Wunsche	10G - Daily Bulletin
Barbara Moore	NC Conference of Clerks of Sup. Ct.
Paul Bell	AOC
Rex Whaley	AOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-24-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assn. of Realtors
Megan Howell	DJJDP
Beth Turner	BAC
Anthony Rollette	NRA
Stevi McClees	McClees Consulting, Inc.
Leon McKillian III	Nelson Mullins
Robert M. Zimmerman	NC DOA
Jim Curcnak	intern (East)
Ed Farthing	Equality NC
Josh Wynne	Equality NC
Sarah Preston	ACLU-NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 9-24-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jere Royall	North Carolina Family Policy Council
Rob Schofield	NC Policy Watch
Kyle Farson	
Johanna Whiteside	
Dave Beck	
Bob Moulton	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 2

SENATE BILL 222

Judiciary II (Criminal) Committee Substitute Adopted 5/17/07

Short Title: Armed Robbery/Apparent Firearms. (Public)

Sponsors:

Referred to:

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ROBBERY WITH AN APPARENT FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line for G.S. 14-87 reads as rewritten:

"**§ 14-87. Robbery with ~~firearms~~ firearms, apparent firearms, or other dangerous weapons.**"

SECTION 2. G.S. 14-87 is amended by adding a new subsection to read:

"(a1) Any person or persons who, having in the person's possession or with the use or threatened use of any replica, article, or device which a reasonable person would believe to be a firearm or other deadly weapon, whereby a reasonable person under the circumstances would believe that his or her life was endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence, or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 222

Judiciary II (Criminal) Committee Substitute Adopted 5/17/07
PROPOSED COMMITTEE SUBSTITUTE S222-CSRD-39 [v.1]

7/19/2007 1:34:16 PM

Short Title: Armed Robbery/Apparent Firearms. (Public)

Sponsors:

Referred to:

February 21, 2007

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF ROBBERY WITH AN APPARENT FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line for G.S. 14-87 reads as rewritten:

"**§ 14-87. Robbery with ~~firearms~~ firearms, apparent firearms, or other dangerous weapons.**"

SECTION 2. G.S. 14-87 is amended by adding a new subsection to read:

"(a1) Any person or persons who, having in the person's possession or with the use or threatened use of any replica, article, or device which a reasonable person would believe to be a firearm or other deadly weapon, whereby a reasonable person under the circumstances would believe that his or her life was endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence, or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class G felony. A second or subsequent violation of this subsection shall be a Class D felony."

SECTION 3. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 222:
Armed Robbery/Apparent Firearms

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 23, 2007
Introduced by:	Sen. Goodall	**Summary by:**	Ben Popkin
Version:	PCS to Second Edition S222-CSRD		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 222 would enact a new subsection of G.S. 14-87, "Robbery with firearms or other dangerous weapon" to create the new offense, "robbery with apparent firearms." The PCS would make the new offense a Class G felony for a first offense and a Class D felony for the second and any subsequent offenses.***

[As introduced, this bill was identical to H344, as introduced by Rep. Alexander, which is currently in House Judiciary I.]

CURRENT LAW: G.S. 14-87 "Robbery with firearms or other dangerous weapons" is a class D felony offense consisting of the following essential elements:

A person guilty of this offense:

- Commits or attempts to commit larceny.
- From the person or from the person's presence.
- By the possession, use, or threatened use of a firearm or other dangerous weapon.
- Which endangers or threatens the life of the person.

The presumptive minimum sentence for a Class D felony is 51 – 64 months.

BILL ANALYSIS: The Proposed Committee Substitute to Senate Bill 222 would enact a new subsection of G.S. 14-87, "Robbery with firearms or other dangerous weapon" to create the new offense, "robbery with apparent firearms." The PCS would make the new offense a class G felony for a first offense and a Class D felony for the second and any subsequent offenses. The offense would consist of the following essential elements:

A person guilty of this offense:

- Commits or attempts to commit larceny.
- From the person or from the person's presence.
- By the possession, use, or threatened use of an apparent firearm ("...any replica, article or device which a reasonable person would believe to be a firearm or other deadly weapon...").
- Which a reasonable person under the circumstances would believe endangers or threatens the person's life.

The presumptive minimum sentence for a Class G felony is 10 – 13 months.

EFFECTIVE DATE: This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

S0222e2-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1287
Committee Substitute Favorable 4/23/07
Third Edition Engrossed 5/2/07

Short Title: Report Denial of Some Pistol Permits. (Public)

Sponsors:

Referred to:

April 3, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT DENIAL OF A LICENSE OR PERMIT TO PURCHASE A PISTOL SHALL BE REPORTED TO THE STATE BUREAU OF INVESTIGATION BY ENTRY INTO AN APPROPRIATE COMPUTERIZED DATABASE THAT IS ACCESSIBLE TO SHERIFFS STATEWIDE.

The General Assembly of North Carolina enacts:

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

"**§ 14-404.1. Report denial of license or permit to SBI by entry into State computerized database.**

(a) If a sheriff declines to issue a permit as provided by G.S. 14-404(b), the sheriff shall notify the State Bureau of Investigation and provide all of the following information to the State Bureau of Investigation by entry into a State computerized database designated by the State Bureau of Investigation:

(1) A statement that the license or permit was denied in accordance with G.S. 14-404(b).

(2) The date of the denial.

(3) The reasons for the denial.

(4) The county in which the license or permit was denied.

(5) Sufficient information to identify the applicant.

Information entered into the database in compliance with this subsection shall be entered in such a manner that a notation of the denial will appear in any subsequent record check conducted in accordance with this Article.

(b) Any information entered into the database in accordance with subsection (a) of this section shall be automatically deleted from the database eight years from the date it was entered. If the sheriff that declined to issue a permit and entered the information required under subsection (a) of this section into the database subsequently issues a permit to the same applicant, the sheriff shall notify the State Bureau of Investigation

and request that the notation of the denial be removed from the database. The State Bureau of Investigation shall remove the notation within five business days of its receipt of the request from the sheriff.

(c) If a person successfully appeals the denial of a permit as provided by G.S. 14-404(b), then the person may provide the sheriff with an official copy of the court's determination and request in writing that the sheriff remove the notation regarding the denial of the person's application for a permit from the appropriate State computerized database. The sheriff shall notify the State Bureau of Investigation of any request made in compliance with this subsection within five business days of the receipt of the request. The State Bureau of Investigation shall remove the notation within five business days of its receipt of the request from the sheriff.

(d) Any information entered into the database in accordance with subsection (a) of this section shall only be accessible for the purpose of record checks conducted in accordance with this Article, except for the purpose of conducting periodic analysis by the Department of Justice regarding the issuing process of permits under G.S. 14-404(b)."

SECTION 2. By September 1, 2007, the State Bureau of Investigation shall have identified an appropriate State computerized database that is easily accessible and available to sheriffs statewide.

SECTION 3. With funds appropriated to the Department of Justice in the 2007-2008 fiscal year, the State Bureau of Investigation shall begin to implement the provisions of this act, including identifying a State computerized database, developing necessary software, providing training on use of the database, and taking any other action necessary to ensure that the database is fully operational.

SECTION 4. Section 1 of this act becomes effective September 1, 2008. The remainder of this act is effective when it becomes law.

HOUSE BILL 1287:
Report Denial of Some Pistol Permits

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 18, 2007
Introduced by:	Reps. Sutton, Jeffus, Harrison	**Summary by:**	Ben Popkin
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 1287 would require sheriffs to enter information about denials of handgun purchase permits into a statewide computer database so that a notation of the denial would appear on subsequent handgun permit record checks. The bill would provide for removal of records from the database eight years after being entered and in certain other instances and would direct the State Bureau of Investigations to have identified an appropriate database by September 1, 2007.

CURRENT LAW: G.S. 14-402 makes it a Class 2 misdemeanor for any person, firm, or corporation in North Carolina to purchase a handgun if the purchaser has not first obtained a permit from the sheriff of the county in which the purchaser resides[1]. The sheriff must certify on the permit that the sheriff has conducted a criminal background check of the applicant and has received no information to indicate that it would be a violation of federal or State law for the applicant to purchase or possess a handgun, and that the sheriff is satisfied as to the applicant's good moral character. A permit may not be issued to the following persons:

- One who is under indictment or information for, or has been convicted of, a felony.
- A fugitive from justice.
- An unlawful user of marijuana or any depressant, stimulant, or narcotic drug.
- One who has been adjudicated mentally incompetent or committed to a mental institution.
- An illegal alien.
- One who has been dishonorably discharged from the armed forces.
- One who has renounced his or her U.S. citizenship.
- One who is subject to a domestic violence restraining order.

A permit is required for each handgun purchase, and the sheriff is required to keep records of all permits issued, including the name, date, place of residence, age, and former place of residence of each person, firm, or corporation to whom a permit is issued.

If the sheriff declines to issue a permit, the sheriff must provide the applicant with a written statement containing the reason(s) for the denial. However, the sheriff is not otherwise required to report or keep records of permits that are denied. An applicant does have the right to appeal a denial in district court.

BILL ANALYSIS:

Section 1 – would amend Article 52A of Chapter 14 by inserting a new section that would require that, if the sheriff declines to issue a permit, he or she must notify the State Bureau of Investigation (SBI) of the denial, including the date of the denial, the reason for the denial, the county in which the permit was denied, and information identifying the applicant, by entering the information into a statewide

[1] The presumptive minimum sentence for a Class 2 misdemeanor is community punishment of 1-30 days and a fine of no more than $1,000.

computerized database. The information would have to be entered in such a manner that a notation of the denial would come up on any subsequent record check conducted under Article 52A of Chapter 14. The bill would specify that information contained in the SBI database would only be accessible in the following two instances: record checks conducted in accordance with Article 52A of Chapter 14, and periodic analyses conducted by the Department of Justice regarding the issuing process of permits under G.S. 14-404(b).

If an applicant successfully appeals a denial, the person may submit a copy of the court's order to the sheriff and request in writing that the notation be removed from the database. The sheriff must notify the SBI within five business days of receiving the request. If a sheriff who declined to issue a permit and filed a report with the SBI later issues a permit to the same person, the sheriff must notify the SBI and request that the record of denial be removed from the SBI database. The SBI would be required to remove the notation within five business days of receiving either of the aforementioned sheriffs' requests.

House Bill 1287 would also require that information entered into the SBI database pursuant to the provisions of this bill would be automatically deleted from the database eight years from the date it was entered.

Section 2 – would require that, by September 1, 2007, the SBI shall have identified a computerized database that is easily accessible and available to sheriffs statewide.

Section 3 – would direct the SBI to begin to implement the provisions of this act, including identifying the database, developing necessary software, providing training, and taking any other actions necessary for implementation, with funds appropriated to the Department of Justice in the 2007-2008 fiscal year.

EFFECTIVE DATE: The provisions of the bill that require the SBI to identify an appropriate database and begin implementation would be effective when it becomes law, and the remainder of the bill would become effective September 1, 2008.

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

H1287e3-SMRD

GRNC

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HB 1287:
"Report Denial of Some Pistol Permits"

Background: Under G.S. 14-402, enacted in 1919, handgun buyers must obtain pistol purchase permits from sheriffs. Contrary to the title of the bill, HB 1287 would actually require sheriffs to report all purchase permit denials to the State Bureau of Investigation for inclusion in an SBI database. Among the many problems inherent in the bill:

North Carolina's purchase permit law is archaic: Although in the early 20th Century sheriffs may have been the best source of information regarding the eligibility of gun buyers, the system has been rendered largely redundant by the federal National Instant Check System, under which those who buy from gun dealers undergo a computerized background check.

Sheriffs may deny permits for arbitrary reasons: Unlike concealed handgun permits, sheriffs have broad latitude in denying pistol purchase permits. Under G.S. 14-404 (a) (2), a sheriff may deny a permit if they have decide they have not "satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant." A law-abiding permit applicant whom the sheriff arbitrarily decides is not of "good moral character" would find themselves enshrined in the SBI database.

Sheriffs may limit numbers of permit applications: One purchase permit is required for each handgun bought. In Avery, Chatham and Durham counties, among others, sheriffs limit the number of purchase permit applications a buyer may make in a year. If a sheriff arbitrarily decides a law-abiding applicant has made too many applications, that applicant would be registered in the SBI database for at least eight years.

Sheriffs may require notarized "character affidavits": In Durham County, among possible others, purchase permit applicants must produce a notarized character affidavit for each application. An applicant who is unable to produce such an affidavit (e.g. recent residents without local contacts) would be registered in the database if their application is rejected for the lack thereof.

Lawful gun buyers would be registered and stigmatized: Because sheriffs may deny handgun purchase permit applications for arbitrary, capricious, or even malicious reasons, it is all but assured that lawful gun buyers will find themselves enshrined in the SBI database for at least eight years.

GRNC strongly urges you to oppose HB 1287: Because the bill adds little to crime prevention while registering and stigmatizing lawful gun buyers, GRNC opposes HB 1287, and will track committee actions and both substantive and procedural votes on the bill for candidate evaluation purposes.

Please oppose HB 1287!

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 947
Committee Substitute Favorable 5/17/07

Short Title: NC Foreclosure/Landlord Tenant Laws. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT A NOTICE OF SALE IN FORECLOSURE PROCEEDINGS BE SENT TO ANY TENANT RESIDING IN THE PROPERTY TO BE SOLD AND ALLOWING THE TENANT AFTER RECEIVING THE NOTICE TO TERMINATE THE RENTAL AGREEMENT UPON TEN DAYS' WRITTEN NOTICE TO THE LANDLORD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.16A reads as rewritten:

"**§ 45-21.16A. Contents of notice of sale.**

The notice of sale shall –

(1) Describe the instrument pursuant to which the sale is held, by identifying the original mortgagors and recording data. If the record owner is different from the original mortgagors, the notice shall also list the record owner of the property, as reflected on the records of the register of deeds not more than 10 days prior to posting the notice. The notice may also reflect the owner not reflected on the records if known;

(2) Designate the date, hour and place of sale consistent with the provisions of the instrument and this Article;

(3) Describe the real property to be sold in such a manner as is reasonably calculated to inform the public as to what is being sold, which description may be in general terms and may incorporate the description as used in the instrument containing the power of sale by reference thereto. Any property described in the instrument containing the power of sale which is not being offered for sale should also be described in such a manner as to enable prospective purchasers to determine what is and what is not being offered for sale;

(4) Repealed by Session Laws 1967, c. 562, s. 2.

(5) State the terms of the sale provided for by the instrument pursuant to which the sale is held, including the amount of the cash deposit, if any, to be made by the highest bidder at the sale;
(6) Include any other provisions required by the instrument to be included therein;
(7) State that the property will be sold subject to taxes and special assessments if it is to be so sold; ~~and~~
(8) State whether the property is being sold subject to or together with any subordinate rights or interests provided those rights and interests are sufficiently ~~identified.~~ identified;
(9) State that an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold; and
(10) State that any person who occupies the property pursuant to a rental agreement may, after receiving the notice of sale, terminate the rental agreement upon 10 days' written notice to the landlord. Upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

SECTION 2. G.S. 45-21.17(4) reads as rewritten:

"(4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with ~~G.S. 45-21.17A.~~G.S. 45-21.17A and, if the property is residential, to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A."

SECTION 3. G.S. 42-45 reads as rewritten:

"**§ 42-45. Early termination of rental agreement by military ~~personnel.~~personnel and tenants residing in foreclosed property.**

...

(b1) Any tenant who resides in a dwelling unit that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 days after the date of the notice

of sale. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 947

Committee Substitute Favorable 5/17/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H947-CSRC-59 [v.7]

7/23/2007 10:43:02 PM

Short Title: NC Foreclosure/Landlord Tenant Laws. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A NOTICE OF SALE IN FORECLOSURE PROCEEDINGS BE SENT TO CERTAIN TENANTS RESIDING IN THE PROPERTY TO BE SOLD, TO ALLOW THOSE TENANTS AFTER RECEIVING THE NOTICE TO TERMINATE THE RENTAL AGREEMENT UPON TEN DAYS' WRITTEN NOTICE TO THE LANDLORD, TO REQUIRE THAT THOSE TENANTS BE GIVEN THIRTY DAYS NOTICE OF AN APPLICATION FOR AN ORDER FOR POSSESSION, AND TO CLARIFY THAT THE PROCEEDS IN THE AUTOMATION ENHANCEMENT AND PRESERVATION FUND MAY TO BE USED FOR THE PRESERVATION AND STORAGE OF PUBLIC RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.16A reads as rewritten:

"**§ 45-21.16A. Contents of notice of sale.**

(a) ~~The notice of sale shall~~ Except as provided in subsection (b) of this section, the notice of sale shall include all of the following:

(1) Describe the instrument pursuant to which the sale is held, by identifying the original mortgagors and recording data. If the record owner is different from the original mortgagors, the notice shall also list the record owner of the property, as reflected on the records of the register of deeds not more than 10 days prior to posting the notice. The notice may also reflect the owner not reflected on the records if ~~known;~~known.

(2) Designate the date, hour and place of sale consistent with the provisions of the instrument and this ~~Article;~~Article.

(3) Describe the real property to be sold in ~~such~~ a manner ~~as~~ that is reasonably calculated to inform the public as to what is being

~~sold,~~sold. The ~~which~~ description may be in general terms and may incorporate by reference the description ~~as~~ used in the instrument containing the power of ~~sale by reference thereto.~~ sale. Any property described in the instrument containing the power of sale which is not being offered for sale should also be described in ~~such~~ a manner ~~as~~ to enable prospective purchasers to determine what is and what is not being offered for ~~sale;~~sale.

(4) Repealed by Session Laws 1967, c. 562, s. 2.

(5) State the terms of the sale provided for by the instrument pursuant to which the sale is held, including the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale;~~sale.

(6) Include any other provisions required by the instrument to be ~~included therein;~~included.

(7) State that the property will be sold subject to taxes and special assessments if it is to be so ~~sold; and~~sold.

(8) State whether the property is being sold subject to or together with any subordinate rights or interests provided those rights and interests are sufficiently identified.

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

(1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.

(2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving the notice of sale, terminate the rental agreement upon 10 days' written notice to the landlord. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

SECTION 2. G.S. 45-21.17(4) reads as rewritten:

"(4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with ~~G.S. 45-21.17A.~~ If the property is residential and contains less than 15 rental units, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice

of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A."

SECTION 3. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"**§ 42-45.2 Early termination of rental agreement by military and tenants residing in certain foreclosed property.**

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 days after the date of the notice of sale. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

SECTION 4. G.S. 45-21.29 reads as rewritten:

"**§ 45-21.29. Orders for possession.**

(a) through (j) repealed by Session Laws 1993, c. 305, s. 18.

(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which ~~such~~ the property is ~~sold, when:~~sold if all of the following apply:

(1) ~~Such~~ The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory ~~provisions;~~provisions.

(2) Repealed by Session Laws 1993, c. 305, s. 18.

(2a) The provisions of this Article have been complied ~~with;~~with.

(3) The sale has been consummated, and the purchase price has been ~~paid;~~paid.

(4) The purchaser has acquired title to and is entitled to possession of the real property ~~sold;~~sold.

(5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, ~~and~~ or, in the case of residential property containing more than 15 rental units, thirty days' notice has been given to the party or parties who remain in possession at the time the application is made.

(6) Application is made by petition to ~~such~~ the clerk by the mortgagee, the trustee, the purchaser of the property, or any ~~such person's~~ authorized ~~representative.~~representative of the mortgagee, trustee, or purchaser of the property.

(l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the sheriff and shall authorize ~~him~~ the sheriff to remove all occupants and their personal property from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The purchaser shall have the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under North Carolina law, including Chapters 42 and 44A of the General Statutes.

(m) When the real property sold is situated in more than one county, the provisions of subsection (l) of this section shall be complied with in each county in which any part of the property is situated."

SECTION 5. G.S. 161-11.3 reads as rewritten:

"**§ 161-11.3. Automation Enhancement and Preservation Fund.**

Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the county shall be set aside annually and placed in a nonreverting Automation Enhancement and Preservation Fund, the proceeds of which shall be expended on computer ~~and~~ or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds. Nothing in this section shall be construed to affect the duty of the board of county commissioners to furnish supplies and equipment to the office of the register of deeds."

SECTION 6. This act becomes effective October 1, 2007. Section 3 applies to residential rental agreements entered into or renewed on or after that date. Sections 1 and 2 apply to notices of sale issued on or after that date.

HOUSE BILL 947:
NC Foreclosure/Landlord Tenant Laws

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 18, 2007
Introduced by:	Reps. Blue, Glazier	**Summary by:**	Kory Goldsmith
Version:	PCS to Second Edition H947-CSRC-59		Committee Counsel

SUMMARY: The Proposed Committee Substitute to House Bill 947 amends the Foreclosure laws to require that the notice of sale for residential property with less than 15 rental units must inform a party in possession of the imminent sale. It would also allow the party in possession to terminate the rental agreement upon 10 days' written notice to the landlord. Finally, the purchaser must give the renter at least 30 days' notice of an application to obtain possession.

The act would become effective October 1, 2007. The new notice requirements would apply to notices of sale made on or after that date. The right of a tenant to terminate the lease with ten days' notice would apply to leases entered into or renewed on or after October 1, 2007.

CURRENT LAW:

Under current law, when a debtor has defaulted on a mortgage or deed of trust which contains a power of sale clause, the mortgagee or trustee may foreclose on the property by filing and serving a notice of hearing to be held before the clerk of court. If the clerk determines that the statutory requirements have been met, he or she orders a sale and issues a notice of sale.

The notice must be sent to the borrower and anyone else required by the instrument or law at least 20 days before the sale. It must also be posted in an area designated by the clerk of court for at least 20 days, and published in a newspaper of general circulation in the county once a week for at least two weeks, with the last publication being no more than ten days before the sale.

The notice must include the following: (1)a description of the instrument under which the sale is held, including the name of the borrowers, and the recording date, as well as the record owner if different from the borrower; (2)a designation of the time and place of the sale; (3)a description of the property to be sold; (4)the terms of the sale provided for in the instrument, including the amount of any cash deposit required; (5) any other provisions required in the instrument to be included; (6) that the property will be sold subject to taxes and assessments; (7) whether the property is being sold subject to or together with any subordinate and identified rights and interests.

BILL ANALYSIS:

Section 1 adds two new pieces of information that must be included in the notice of sale for property that includes less than 15 rental units. . It would require that the notice state that an order of possession may be issued to the purchaser and against the party in possession of the property by the clerk of court. It must also state that anyone who entered into or renewed a rental agreement on or after October 1, 2007 may terminate the rental agreement after receiving notice of sale, but must give the landlord ten days written notice. The tenant is liable for rent due under the agreement prorated to the effective date of the termination.

Section 2 adds a requirement that the if the property that is the subject of the foreclosure contains less than 15 rental units, the notice of sale must be mailed to anyone who occupies the property pursuant to a rental agreement at least 20 days before the sale.

Section 3 creates a new section, G.S. 42-45.2 which amends the law governing residential rental agreements to allow tenants who reside in residential real property containing less than 15 rental units that are being sold in foreclosure to terminate the rental agreement after receiving a notice of sale by giving the landlord at least ten days written notice of termination. Upon termination of the agreement, the tenant is liable the rent due on a prorated basis. The tenant is not liable for any other rent or damages resulting only from the early termination of the agreement.

Section 4 creates a requirement that an order for possession of real property may not be issued with regard to residential property containing more than 15 rental units unless at least thirty days' notice has been given to the party or parties who remain in possession at the time of the application.

Section 5 clarifies that the Automation Enhancement and Preservation Fund may be used to purchase technology associated with the preservation and storage of public records in the office of the register of deeds.

H0947e2-SMRC-CSRC-59

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 316

Committee Substitute Favorable 3/27/07

Short Title: Amend Civil Procedure Rule 45. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 45 OF THE RULES OF CIVIL PROCEDURE: (1) TO ESTABLISH A TIME LIMIT FOR SERVING UPON EACH PARTY TO AN ACTION A COPY OF A SUBPOENA TO APPEAR OR TO PRODUCE RECORDS AND (2) TO AUTHORIZE A PARTY TO AN ACTION TO OBJECT TO A SUBPOENA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 45(b)(2), reads as rewritten:

"(2) Service of copy. – A copy of the subpoena served under subdivision (1) of this subsection shall also be served upon each party in the manner prescribed by Rule 5(b). Service on the other parties shall be made within three business days after the service of the subpoena upon the person named therein. This subdivision does not apply to subpoenas issued under G.S. 15A-801 or G.S. 15A-802."

SECTION 2. G.S. 1A-1, Rule 45, is amended by adding a new subsection to read:

"(d1) Opportunity for Inspection of Subpoenaed Matter. – Records, books, papers, documents, or other tangible things produced in compliance with a subpoena shall not be admissible in any action or proceeding unless the party serving the subpoena shall, within five days after the receipt of material produced in compliance with the subpoena, provide all other parties with accurate copies of the material, or with a reasonable opportunity to inspect and copy it."

SECTION 3. This act becomes effective October 1, 2007, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 316

Committee Substitute Favorable 3/27/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H316-CSRI-29 [v.5]

7/23/2007 5:01:06 PM

Short Title: Amend Civil Procedure Rule 45. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 45 OF THE RULES OF CIVIL PROCEDURE TO ESTABLISH AN OBLIGATION TO PROVIDE NOTICE TO ALL PARTIES TO AN ACTION OF THE ISSUANCE OF A SUBPOENA AND THE RECEIPT OF MATERIAL PRODUCED IN COMPLIANCE WITH THE SUBPOENA, AND TO PROVIDE A REASONABLE OPPORTUNITY TO INSPECT SUCH MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 45, is amended by adding a new subsection to read:

"(d1) Opportunity for Inspection of Subpoenaed Matter. – A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with notice of: (i) the subpoena, and (ii) receipt of the material produced in compliance with the subpoena. The party or attorney responsible for the issuance and service of the subpoena shall, upon request, provide all other parties a reasonable opportunity to copy and inspect such material at the expense of the inspecting party."

SECTION 2. This act becomes effective October 1, 2007, and applies to actions filed on or after that date.

HOUSE BILL 316:
Amend Civil Procedure Rule 45

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 23, 2007
Introduced by:	Rep. Daughtry	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to Second Edition H316-CSRI-29 [v.5]		

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 316 would amend Rule 45 of the Rules of Civil Procedure to require that when a subpoena is served directing a person to produce designated records, the party or attorney issuing the subpoena must, within five business days of receipt of the material, provide notice to all other parties of: (i) the subpoena, and (i) receipt of the material produced. The party or attorney issuing the subpoena must also, upon request, provide all other parties reasonable opportunity to inspect and copy the material produced at the expense of the inspecting party.***

CURRENT LAW: Rule 45 of the Rules of Civil Procedure, as set out in Chapter 1A of the General Statutes, provides for the issuance of a subpoena directing a person to attend and give testimony in a matter or to produce and permit inspection of designated records that are in the person's custody or control. A subpoena may be served by the sheriff, a coroner, or any person at least 18 who is not a party to the action. A copy of the subpoena must be served upon each party to the action by delivering a copy to the party or by mailing it to the party at the party's last known address. Delivery of a copy includes handing it to the attorney or to the party, leaving it at the attorney's office with an employee, or sending a faxed copy with confirmation. A person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. Each of the following grounds may be sufficient for objecting to a subpoena:

a. The subpoena fails to allow reasonable time for compliance.
b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
c. The subpoena subjects a person to an undue burden.
d. The subpoena is otherwise unreasonable or oppressive.
e. The subpoena is procedurally defective.

BILL ANALYSIS: The PCS for House Bill 316 would require that when a subpoena is served directing a person to produce designated records, the party or attorney issuing the subpoena must, within five business days of receipt of the material, provide notice to all other parties of (i) the subpoena, and (i) receipt of the material produced. The party or attorney issuing the subpoena must also, upon request, provide all other parties reasonable opportunity to inspect and copy the material produced at the expense of the inspecting party.

EFFECTIVE DATE: The bill would become effective October 1, 2007 and apply to actions filed on or after that date.

Brenda J. Carter, counsel to House Judiciary III, substantially contributed to this summary.

H0316e2-SMRI-CSRI-29 v4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

7/24/07

H. B. No. 316 DATE ~~7/24/07~~

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

PCS H316-CSR1-29

Rep.)
Sen.)

moves to amend the bill on page 1, line 13

by rewriting that line to read:

"parties with (i) the copy of the subpoena as required in subsection (b)(2) of this section, and (ii) notice of receipt of the material produced in".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 943

Committee Substitute Favorable 4/10/07

Short Title: Updating of Jury List. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE REGISTRAR TO ASSIST COUNTY JURY COMMISSIONS IN UPDATING THEIR LISTS OF PROSPECTIVE JURORS BY PROVIDING A LIST OF RESIDENTS OF EACH COUNTY WHO HAVE DIED RECENTLY; AND TO EXCLUDE FROM THE LISTS PROVIDED BY THE COMMISSIONER OF MOTOR VEHICLES TO COUNTY JURY COMMISSIONS THE NAMES OF PERSONS WHOSE DRIVERS LICENSES HAVE BEEN EXPIRED FOR AT LEAST EIGHT YEARS AND WHO HAVE BEEN INACTIVE VOTERS FOR AT LEAST FOUR YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2(b) reads as rewritten:

"(b) In preparing the list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121. The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable."

SECTION 2. Article 4 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-121. List of deceased residents for county jury commission.**

The State Registrar shall provide to each county's jury commission an alphabetical list of all residents of that county who have died in the two years prior to July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the county who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the jury commission."

SECTION 3. G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been ~~canceled.~~canceled, except that the list shall not include the name of any formerly licensed driver whose license is expired and has not been renewed for eight years or more. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 4. G.S. 163-82.11(e) reads as rewritten:

"(e) Cooperation on List for Jury Commission. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for four years or more."

SECTION 5. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 943

Committee Substitute Favorable 4/10/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H943-CSRD-41 [v.1]

7/23/2007 6:43:50 PM

Short Title: Updating of Jury List. (Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE REGISTRAR TO ASSIST COUNTY JURY COMMISSIONS IN UPDATING THEIR LISTS OF PROSPECTIVE JURORS BY PROVIDING A LIST OF RESIDENTS OF EACH COUNTY WHO HAVE DIED RECENTLY; TO REQUIRE THE STATE REGISTRAR TO PROVIDE THE COMMISSIONER OF MOTOR VEHICLES WITH A LIST OF RESIDENTS OF THE STATE WHO HAVE DIED RECENTLY; AND TO EXCLUDE FROM THE LISTS PROVIDED BY THE COMMISSIONER OF MOTOR VEHICLES TO COUNTY JURY COMMISSIONS THE NAMES OF PERSONS WHOSE DRIVERS LICENSES HAVE BEEN EXPIRED FOR AT LEAST EIGHT YEARS AND WHO HAVE BEEN INACTIVE VOTERS FOR AT LEAST EIGHT YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2(b) reads as rewritten:

"(b) In preparing the list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121(a). The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable."

SECTION 2. Article 4 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-121. List of deceased residents for county jury commission and Commissioner of Motor Vehicles.**

(a) The State Registrar shall provide to each county's jury commission an alphabetical list of all residents of that county who have died in the two years prior to

July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the county who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the jury commission.

(b) The State Registrar shall provide to the Commissioner of Motor Vehicles an alphabetical list of all residents of the State who have died in the two years prior to July 1 of each odd-numbered year, unless an annual jury list is being prepared under G.S. 9-2(a), in which case the list shall be of all residents of the State who have died in the year prior to July 1 of each year. The list shall include the name and address of each deceased resident and may be in either printed or computerized form, as requested by the Commissioner of Motor Vehicles."

SECTION 3. G.S. 20-43.4 reads as rewritten:

"**§ 20-43.4. Current list of licensed drivers to be provided to jury commissions.**

The Commissioner of Motor Vehicles shall provide to each county jury commission an alphabetical list of all persons that the Commissioner has determined are residents of the county, who will be 18 years of age or older as of the first day of January of the following year, and licensed to drive a motor vehicle as of July 1 of each odd-numbered year, provided that if an annual jury list is being prepared under G.S. 9-2(a), the list to be provided to the county jury commission shall be updated and provided annually. The list shall include those persons whose license to drive has been suspended, and those former licensees whose license has been ~~canceled.~~canceled, except that the list shall not include the name of any formerly licensed driver whose license is expired and has not been renewed for eight years or more. The list shall contain the address and zip code of each driver, plus the driver's date of birth, sex, social security number, and drivers license number, and may be in either printed or computerized form, as requested by each county. Before providing the list to the county jury commission, the Commissioner shall have computer-matched the list with the voter registration list of the State Board of Elections to eliminate duplicates. The Commissioner shall also remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the Commissioner by the State Registrar under G.S. 130A-121(b). The Commissioner shall include in the list provided to the county jury commission names of registered voters who do not have drivers licenses, and shall indicate the licensed or formerly licensed drivers who are also registered voters, the licensed or formerly licensed drivers who are not registered voters, and the registered voters who are not licensed or formerly licensed drivers. The list so provided shall be used solely for jury selection and election records purposes and no other. Information provided by the Commissioner to county jury commissions and the State Board of Elections under this section shall remain confidential, shall continue to be subject to the disclosure restriction provisions of G.S. 20-43.1, and shall not be a public record for purposes of Chapter 132 of the General Statutes."

SECTION 4. G.S. 163-82.11(e) reads as rewritten:

"(e) Cooperation on List for Jury Commission. – The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission

of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for eight years or more."

SECTION 5. This act becomes effective October 1, 2007.

HOUSE BILL 943:
Updating of Jury List

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 6, 2007
Introduced by:	Rep. Lewis	**Summary by:**	Ben Popkin
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 943 would require the State Registrar to provide county jury commissions with lists of recently deceased residents, and would require jury commissions to remove those deceased residents from their jury lists. The bill would also require the Commissioner of Motor Vehicles and the State Board of Elections to remove drivers whose licenses have been expired for an extended period of time and voters who have been inactive for an extended period of time from the lists provided to county jury commissions.

CURRENT LAW:

Preparation of jury lists. Each county jury commission is required to prepare a list of prospective jurors on July 1 of every odd-numbered year to serve in the biennium beginning on January 1 of the following year. The commission may instead prepare the jury list annually if requested in writing by the senior regular resident superior court judge. The individuals placed on the jury list come from a list supplied by the Commissioner of Motor Vehicles, which is prepared in cooperation with the State Board of Elections and includes licensed or formerly licensed drivers who are registered voters, licensed or formerly licensed drivers who are not registered voters, and registered voters who are not licensed or formerly licensed drivers.

Records of deaths. For every death that occurs in the State, a death certificate must be filed with the local registrar within five days after the death. The local registrar is required to send original death certificates to the State Registrar on the fifth day of each month, and the State Registrar has the duty of securing and maintaining all vital records in the State.

BILL ANALYSIS: House Bill 943 would require the State Registrar to provide each county jury commission with an alphabetical list of county residents who have died in the two year period prior to July 1 of each odd-numbered year if the jury list in that county is being prepared for the next biennium. The list would have to include residents who have died in the one year period prior to July 1 of each year if the jury list is prepared annually. The bill would require the county jury commission to then remove recently deceased residents from its jury list.

The bill would also require the following people to be excluded from the lists provided to the county jury commissions for use in preparing prospective jury lists:

- Any formerly licensed driver whose license has been expired for eight years or more.
- Any registered voter who has been inactive for four years or more.

EFFECTIVE DATE: The bill would become effective July 1, 2007.

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

H0943e2-SMRD

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 943

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

H943-ARD-13 [v.1]

Date _____,2007

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

Representative _____

moves to amend the bill on page 2, line 34 by deleting the word "July" and substituting the word "October".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 26, 2007	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 38	Missing Persons Alert/Persons w/Dementia.	Representative Earle Representative Parmon Representative Womble Representative Insko
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
SB 657	Omnibus Civil Rights Act.	Senator Dannelly

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, July 26, 2007, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 38	Missing Persons Alert/Persons w/Dementia.	Representative Earle Representative Parmon Representative Womble Representative Insko
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
SB 657	Omnibus Civil Rights Act.	Senator Dannelly

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 26, 2007

Senator Ed Jones, Vice Chairman, called the Senate Judiciary II Committee to order on July 26, 2007, with ten members present. He introduced pages Rachel Gallimore, Larkin Taylor-Parker, Chelsey Carelas and Brittney Palmer and thanked them for their service.

SB 657 (Omnibus Civil Rights Act.) Senator East moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator McKissick was recognized to explain the bill. Questions from Senators East, Goodall and Dorsett were answered by Senator McKissick. Senator Dorsett moved for a favorable report, unfavorable to the original bill with a referral to Rules. All voted and the motion carried.

HB 38 ((Missing Persons Alert/Persons w/Dementia.) Senator Swindell moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Parmon was recognized to explain the bill. Senator Dorsett presented an amendment and moved that it be accepted. All voted and the motion carried. Ben Popkin, Staff Attorney, gave additional explanation. Representative Parmon and Ben Popkin answered questions from Senators East, Jacumin Dorsett and Jones. Ms. Lou Wilson, Executive Director of North Carolina Association, Long Term Care Facilities and Mr. Mike Robertson, Director, Alcohol Law Enforcement of the North Carolina Department of Crime Control and Public Safety, spoke in support of the bill. Senator Dorsett moved for a favorable report, as amended, unfavorable to the original bill, and rolled into a new proposed committee substitute. All voted and the motion carried.

HB 573 (Authorize Judge/Concealed Weapon in Court.) Senator East moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Williams was recognized to explain the bill. Mr. Gregg Stall, of the Administrative Office of the Court, gave additional explanation. Representative Williams and Mr. Stall answered questions from Senators Dorsett, East, Jones, Goodall and Kerr. Mr. Jon Carr, Attorney, spoke in opposition to the bill and Ms. Henri McClees, Attorney, spoke in support. Judge Ralph Walker, Director of the North Carolina Administrative Office of the Courts, gave additional explanation. Senator Jones stated that no voted would be taken at this meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 26-07
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Price	N. Carolinians Against Gun Violence
Jon Carr	Jordan Price (" ")
[illegible]	HEART OF
Sarah Edwards	Triangle Officials Inc
[illegible] Burden	STUDENT
Mary Edwards	[illegible] AGING & ADULT SERVICES
Ashley Walker	AARP
[illegible]	Bonner & Assoc.
Gordon A Young	NC ARCHIVES
[illegible]	NCFPC
Jeff Mixon	Civitas

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-26-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Paul Sherman	NCFB
S Henri McClees	McClees Consulting
Jr McClees	" "
ANTHONY RONCHETTI	NRA
Alison Kiser	Planned Parenthood of Central NC
Cliff Vaala	Gas Office
Ronnie Taylor	NCALB
MIKE ROBERTSON	NCALB
J Kenley Woolen Jr	NC DOA
Robert Zimmerman	NCDOA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-26-07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ED FARTHING	EQUALITY NC
JOSH WYNNE	EQUALITY NC
Ian Palmquist	Equality NC
Rev. MARK CREECH	CAC
[illegible]	[illegible]
[illegible]	[illegible]
Jen Royall	NC Family Policy Council

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 38

Committee Substitute Favorable 4/4/07

Short Title: Missing Persons Alert/Persons w/Dementia. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PUBLIC ALERT TO BE ISSUED WHEN A PERSON WITH DEMENTIA OR OTHER COGNITIVE IMPAIRMENT IS REPORTED MISSING, TO INCLUDE CAREGIVERS AMONG THOSE WHO CAN REPORT AN INDIVIDUAL MISSING, AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE PROVISIONS CONCERNING THE NORTH CAROLINA CENTER FOR MISSING PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499 reads as rewritten:

"**§ 143B-499. Submission of missing person reports to the Center.**

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual may submit a missing person report to the Center of any missing child or missing person, regardless of the circumstances, after having first submitted a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing, regardless of the circumstances."

SECTION 2. G.S. 143B-499.1 reads as rewritten:

"**§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child."

SECTION 3. G.S. 143B-499.3 reads as rewritten:

"§ 143B-499.3. Duty of individuals to notify Center and law-enforcement agency when missing person has been located.

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual who submits a missing person report to a law-enforcement agency or to the Center, shall immediately notify the law-enforcement agency and the Center of any individual whose location has been determined. The Center shall confirm the deletion of the individual's records from the FBI/NCIC's missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law-enforcement agency having jurisdiction of the records."

SECTION 4. G.S. 143B-499.5 reads as rewritten:

"§ 143B-499.5. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in G.S. 143B-499~~143B-499.3~~ of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting."

SECTION 5. Part 5A of Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-499.8. North Carolina Silver Alert System established.

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the information as quickly as possible when the missing person is 18 years of age or older, and the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive

impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing adult meeting the criteria of this subsection when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign."

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 38

Committee Substitute Favorable 4/4/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H38-CSRD-43 [v.3]

7/25/2007 6:17:07 PM

Short Title: Silver Alert System/Missing Persons Alert. (Public)

Sponsors:

Referred to:

January 31, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PUBLIC ALERT TO BE ISSUED WHEN A PERSON WITH DEMENTIA OR OTHER COGNITIVE IMPAIRMENT IS REPORTED MISSING, TO INCLUDE CAREGIVERS AMONG THOSE WHO CAN REPORT AN INDIVIDUAL MISSING, TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE PROVISIONS CONCERNING THE NORTH CAROLINA CENTER FOR MISSING PERSONS, AND TO EXEMPT EMS WORKERS LOCATING MISSING PERSONS FROM THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499 reads as rewritten:

"**§ 143B-499. Submission of missing person reports to the Center.**

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual may submit a missing person report to the Center of any missing child or missing person, regardless of the circumstances, after having first submitted a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing, regardless of the circumstances."

SECTION 2. G.S. 143B-499.1 reads as rewritten:

"**§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to

all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center. No law enforcement agency shall establish or maintain any policy which requires the observance of any waiting period before accepting a missing person report.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center and the National Center for Missing and Exploited Children of the relevant data about the missing child."

SECTION 3. G.S. 143B-499.3 reads as rewritten:

"**§ 143B-499.3. Duty of individuals to notify Center and law-enforcement agency when missing person has been located.**

Any parent, spouse, guardian, ~~or~~ legal custodian, or person responsible for the supervision of the missing individual who submits a missing person report to a law-enforcement agency or to the Center, shall immediately notify the law-enforcement agency and the Center of any individual whose location has been determined. The Center shall confirm the deletion of the individual's records from the FBI/NCIC's missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law-enforcement agency having jurisdiction of the records."

SECTION 4. G.S. 143B-499.5 reads as rewritten:

"**§ 143B-499.5. Provision of toll-free service; instructions to callers; communication with law-enforcement agencies.**

The Center shall provide a toll-free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. The Center personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in G.S. 143B-499~~143B-499.3~~ of first having to submit a missing person report on the individual to the law-enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law-enforcement agency may retrieve information imparted to the Center by means of this phone line. The Center shall directly communicate any report of a sighting of a missing person or a missing child to the law-enforcement agency having jurisdiction in the area of disappearance or sighting."

SECTION 5. Part 5A of Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-499.8. North Carolina Silver Alert System established.**

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the

information as quickly as possible when the missing person is 18 years of age or older, and the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing adult meeting the criteria of this subsection when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign."

SECTION 6. G.S. 74C-3(b) reads as rewritten:

(b) "Private protective services" shall not mean any of the following:

(1) Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance ~~company;~~ company.

(2) An officer or employee of the United States, this State, or any political subdivision of either while such officer or employee is engaged in the performance of his official duties within the course and scope of his employment with the United States, this State, or any political subdivision of ~~either;~~ either.

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,

b. Information for employment purposes,

c. Information for the underwriting of insurance involving the consumer,

d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility, or

e. A legitimate business need for the information in connection with a business transaction involving the ~~consumer;~~ consumer.

(4) An attorney at law licensed to practice in North Carolina while engaged in such practice and his agent, provided said agent is

performing duties only in connection with his principal's practice of ~~law;~~ law.

(5) The legal owner or lien holder, and his agents and employees, of personal property which has been sold in a transaction wherein a security interest in personal property has been created to secure the sales transaction, who engage in repossession of said personal ~~property;~~ property.

(6) Repealed by Session Laws 1989, c. 759, s. 3.

(7) Repealed by Session Laws 1981, c. 807, s. 1.

(8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job for that person, firm, association, or corporation and, while performing such job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a ~~licensee;~~ licensee.

(9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General ~~Statutes;~~ Statutes.

(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for ~~employment;~~ employment.

(11) A person who conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:

a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) Research laboratories and consultants who analyze, test, or in any way apply their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and give their opinions and findings to the requesting source or to a designee of the ~~requestor;~~ requestor.

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of his duties, the provisions of G.S. 74C-13 ~~apply;~~ apply.

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the ~~business; or~~ business.

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts.

(16) Emergency medical services personnel credentialed under Article 7 of Chapter 131E of the General Statutes who engage in search and rescue activities at the request of either the State, a political subdivision of the State, or one of the following types of facilities: an adult care home licensed under Chapter 131D of the General Statutes, a health care facility or agency licensed under Chapter 131E of the General Statutes, or a facility licensed to offer mental health, developmental disability or substance abuse services under Chapter 122C of the General Statutes. For the purposes of this subdivision, 'search and rescue' means activities and documents relating to efforts to locate an individual following the individual's disappearance."

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

HOUSE BILL 38:
Silver Alert System/Missing Persons Alert.

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 25, 2007
Introduced by:	Reps. Parmon, Womble, Insko, Earle	**Summary by:**	Ben Popkin
Version:	PCS to Second Edition H38-CSRD		Committee Counsel

SUMMARY: House Bill 38 allows for a public alert to be issued by the North Carolina Center for Missing Persons when an individual believed to be suffering from dementia or other cognitive impairment, is reporting missing.

CURRENT LAW: Part 5A of G.S. § 143B establishes the North Carolina Center for Missing Persons ("the Center"). The purpose of this organization is to serve as a central repository for information regarding missing persons in North Carolina, with an emphasis on missing children.

§ 143B-499.1 directs local law-enforcement agencies to issue information regarding a person reported missing to relevant federal agencies and initiate a statewide broadcast of the relevant information to law-enforcement agencies. The local law enforcement agencies also transmit a copy of the missing person report to the Center.

§ 143B-499.7 establishes the North Carolina AMBER Alert System. Under the AMBER alert system, the Center distributes information regarding children under the age of 17 that are abducted or believed to be in danger of injury or death through radio and television broadcasters, the Department of Transportation, and the Division of Emergency Management.

BILL ANALYSIS: House Bill 38 directs the Center to create a statewide alert system for missing individuals believed to be suffering from dementia or other cognitive impairment. This alert system will distribute these alerts through radio and television broadcasters and the Department of Transportation.

Sec. 1: Parents, spouses, guardians, or legal custodians may submit a missing person report to the Center after first having filed a missing person report with local law enforcement. "Person responsible for the supervision of the missing individual" is added to these categories of individuals who may submit a report to the Center, to ensure caregivers of children and the elderly can also submit a missing person report to the Center after having first filed a missing person report with local law enforcement.

Sec. 2: Upon receipt of a missing person report from a parent, spouse, guardian, or legal custodian local law enforcement must enter the data into nationwide databases, distribute the information to statewide law enforcement agencies, and transmit the information to the Center. "Person responsible for the supervision of the missing individual" is added to these categories of individuals, to ensure missing person reports submitted by caregivers of children and the elderly are given the same treatment as reports from parents, spouses, guardians, or legal custodians.

New language is added prohibiting local law enforcement agencies from establishing any policy which requires the observance of a waiting period before the acceptance of a missing person report.

Sec. 3: Any parent, spouse, guardian, or legal custodian who submits a missing person report to law enforcement agencies, including the Center, are required to notify the agencies immediately if the

missing person is found. "Person responsible for the supervision of the missing individual" is added to the categories of individuals required to notify the law enforcement agencies if the missing person is found.

Sec. 4: Corrects a statutory reference in the statute. 143B-499.5 directs the Center to create a toll-free line for anyone to report the disappearance of an individual. The Center must inform the individual that a report must be filed with local law enforcement, before the Center can accept a missing person's report. This requirement is found in 143B-499, not 143B-499.3.

Sec. 5: Establishes the "Silver Alert System" within the Center to provide a statewide alert system for rapid dissemination of information regarding missing individuals believed to be suffering from dementia or other cognitive impairment, and includes the following provisions:

- Directs the Center, following receipt of a report of a missing person, to issue an alert providing for rapid statewide dissemination of information about the missing person.
- Directs the Center to develop guidelines and procedures for implementing the Silver Alert System.
- Directs the Center to consult with the Department of Transportation to develop procedures for providing information about the missing person to motorists.

The PCS to HB 38 makes the following changes to the second edition of the bill:

Amends the short title to include reference to the Silver Alert System. Amends the long title to reflect the addition of the EMS workers' exemption in Section 6.

Sec. 6: Adds emergency medical services personnel who have been requested by a facility or political subdivision to locate an individual who has disappeared to the existing list of activities that are *not* considered to be "private protective services". Persons who, on a contractual basis, make inquiries or investigations concerning the identity, habits, activity, movement, whereabouts, etc. of any person, fall within the definition of "private detective" or "private investigator" and are required to comply with licensure and other requirements of the Private Protective Services Act[1]. Addition of this exemption to the categories of exemptions already provided in G.S. 74C-3(b) clarifies that EMS personnel assisting in 'search and rescue' location of missing persons activities are not required to be licensed under the Act to do so.

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

BACKGROUND: The North Carolina center for Missing Persons was established in 1985 by the General Assembly. The AMBER Alert System was established in 2002 as the North Carolina Child Alert Network (NC CAN) in 2002, and renamed the AMBER Alert System in 2003.

H0038e2-SMRD-CSRD

[1] G.S. 74C-3(a)(8).

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 38 DATE _____

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

COMMITTEE SUBSTITUTE H38 - CSRD-43 [v.3]

Rep.) Dorsett

Sen.)

moves to amend the bill on page 5, line 25

( ) WHICH CHANGES THE TITLE

by inserting the following after the period and before the quotation mark:

"This exemption shall not apply if the emergency medical services provider provides services beyond emergency search and rescue and said activities meet the definition of private protective services as defined in G.S. 74C-3."

SIGNED Katie G. Dorsett

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 573

Short Title:	Authorize Judge/Concealed Weapon in Court.	(Public)
Sponsors:	Representatives Williams, Blue, Howard, Brubaker (Primary Sponsors); Adams, Barnhart, Blackwood, Blust, Brown, Church, Cleveland, Coleman, Daughtridge, Dockham, England, Faison, Folwell, Frye, Glazier, Goforth, Goodwin, J. Harrell, Hill, Hilton, Jones, Justus, Killian, Kiser, McComas, McGee, McLawhorn, Neumann, Ray, Samuelson, Setzer, Spear, Steen, Sutton, Wainwright, Walker, R. Warren, Wiley, Wray, and Yongue.	
Referred to:	Judiciary II.	

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DISTRICT COURT JUDGE OR SUPERIOR COURT JUDGE WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3.

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3.

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 573
PROPOSED SENATE COMMITTEE SUBSTITUTE H573-CSRI-30 [v.1]

7/26/2007 10:22:08 AM

Short Title: Authorize Judge/Concealed Weapon in Court. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DISTRICT COURT JUDGE OR SUPERIOR COURT JUDGE WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES, TO MAKE CHANGES TO THE STATE BUDGET ACT AS IT APPLIES TO THE JUDICIAL BRANCH, TO ADD A NEW DUTY TO THE DIRECTOR'S POWERS AND DUTIES, TO MODIFY OR REPEAL CERTAIN STATUTES RELATED TO DRUG TREATMENT COURTS, TO ESTABLISH A PILOT PROGRAM IN SEVERAL COUNTIES FOR ELECTRONIC COURT FILINGS, AND TO MAKE CLARIFYING CHANGES FOR CONTINUING TRAINING FOR MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3.

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3.

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge the judge's official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 2. G.S. 143C-1-1(b) reads as rewritten:

"(b) The provisions of this Chapter shall apply to every State ~~agency~~ agency, unless specifically exempted herein, and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch."

SECTION 3. G.S. 143C-3-2 reads as rewritten:

"**§ 143C-3-2. Budget estimate for the judicial branch.**

The Administrative Officer of the Courts shall give the Director an estimate of the financial needs of the judicial branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the judiciary shall be approved and certified by the Chief Justice. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include these estimates for the judicial branch in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget ~~submitted~~ the Director submits to the General Assembly."

SECTION 4. G.S. 143C-3-5(a) reads as rewritten:

"(a) Budget Proposals. – The Governor shall present budget ~~recommendations~~ recommendations, consistent with G.S. 143C-3-1, 143C-3-2, and 143C-3-3 to each regular session of the General Assembly at a mutually agreeable time to be fixed by joint resolution."

SECTION 5. G.S. 143C-4-6(b) reads as rewritten:

"(b) Increase in Size Limitation. – To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) operation of the courts or ~~(iii)~~(iv) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget

provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment."

SECTION 6. G.S. 143C-6-2(b) reads as rewritten:

"(b) Revenue Collections. – The Director, with the assistance of the Secretary of Revenue and other officials collecting or receiving appropriated State revenue, shall continuously survey the revenue collections. If the Director finds that revenues to any fund, when added to the beginning unreserved fund balance in that fund, will be insufficient to support appropriations from that fund, the Director shall immediately notify the General Assembly that a deficit is anticipated. The Director shall consult with the Chief Justice to identify expenditure reductions and other lawful measures the Chief Justice and Judicial Branch can implement to reduce expenditures. The Director shall report in a timely manner to the General Assembly a plan containing the expenditure reductions and other lawful measures as the Director is implementing in order to avert the deficit. The Director's plan shall include expenditure reductions and other lawful measures identified by the Chief Justice and Judicial Branch as methods to reduce expenditures. The Director may recommend changes to the expenditure reductions and other lawful measures identified by the Chief Justice and Judicial Branch as methods to reduce expenditures in the plan the Director submits to the General Assembly"

SECTION 7. G.S.143C-6-4 is amended by adding a new subsection to read:

"(i) Transfers in programs, objects, and line items in the Judicial Branch Budget. – The Chief Justice of the Supreme Court may approve transfers and expenditures for more than was authorized in the enacted budget for programs, objects, or line items in the budget of the judicial branch and shall report transfers quarterly, beginning October 31, to the Joint Legislative Commission on Governmental Operations on transfers approved by the Chief Justice."

SECTION 8. G.S. 143C-6-6(c) reads as rewritten:

"(c) This section does not apply to The University of North ~~Carolina.~~Carolina or the judicial branch."

SECTION 9. G.S. 143C-7-1(a) reads as rewritten:

"(a) Report to Director. – A State ~~agency~~ agency, other than the judicial branch, that submits to the federal government or to any other party an application for funds that will be subject to this Chapter shall first provide to the Director a copy of the application along with any related information the Director may require. The judicial branch shall provide the Director with a copy of the application and any related information after making the application."

SECTION 10. G.S. 143C-10-3(a) reads as rewritten:

"(a) State ~~Officer~~ Officers or ~~Employee.~~Employee of the Executive Branch. – The Governor may suspend from the performance of his or her duties any State officer or ~~employee,~~employee of the executive branch except an officer elected by the people, who persists, after notice and warning, in failing or refusing to comply with the provisions of this Chapter or any lawful administrative directive issued pursuant to this Chapter. Before acting to suspend, the Governor shall give the accused notice and an

opportunity to be heard in his or her own defense. The Governor shall report the facts leading to suspension to the Attorney General who may initiate appropriate criminal or civil proceedings. The Governor may apply to the General Court of Justice for a restraining order and injunction if a suspended officer or employee persists in performing official acts."

SECTION 11. G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and ~~his~~ the director's duties include all of the following:

(1) Collect and compile statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the ~~courts;~~courts.

(2) Determine the state of the dockets and evaluate the practices and procedures of the courts, and make recommendations concerning the number of judges, district attorneys, and magistrates required for the efficient administration of ~~justice;~~ justice.

(3) Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior ~~court;~~court.

(4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department, and authorize expenditures from funds appropriated for these ~~purposes;~~purposes.

(5) Investigate, make recommendations concerning, and assist in the securing of adequate physical accommodations for the General Court of ~~Justice;~~Justice.

(6) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and supplies as are to be acquired with State funds for the General Court of ~~Justice;~~Justice.

(7) Make recommendations for the improvement of the operations of the Judicial ~~Department;~~Department.

(8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General ~~Assembly;~~Assembly.

(9) Assist the Chief Justice in performing his duties relating to the transfer of district court judges for temporary or specialized ~~duty;~~duty.

(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~~G.S. 7A-343.2.

(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;~~service.

(9c) 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;~~so.

(9d) Analyze the use of contractual positions in the Judicial Department and, after consultation with the Joint Legislative Commission on Governmental Operations, convert contractual positions to permanent State positions when the Director determines it is in the best interests of the Judicial Department to do so.

(10) Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice."

SECTION 12. G.S. 7A-794 reads as rewritten:

"**§ 7A-794. Fund administration.**

The Drug Treatment Court Program Fund is created in the Administrative Office of the Courts and is administered by the Director of the Administrative Office of the Courts in consultation with the State Drug Treatment Court Advisory Committee. ~~The Director of the Administrative Office of the Courts shall award grants from this Fund and implement local drug treatment court programs. Grants shall be awarded based upon the general guidelines set forth by the Director of the Administrative Office of the Courts and the State Drug Treatment Court Advisory Committee.~~"

SECTION 13. G.S. 7A-798 is repealed.

SECTION 14 G.S. 7A-801 reads as rewritten:

"**§ 7A-801. ~~Plan for evaluation.~~Monitoring and annual report.**

The Administrative Office of the Courts shall ~~develop a statewide model and conduct ongoing evaluations of~~ monitor all State-recognized and funded local drug treatment ~~court programs. A report of these evaluations shall be submitted~~ courts, prepare an annual report on the implementation, operation, and effectiveness of the statewide drug treatment court program, and submit the report to the General Assembly by March 1 of each year. Each local drug treatment court program shall submit evaluation reports to the Administrative Office of the Courts as requested."

SECTION 15.(a). The Administrative Office of the Courts may conduct a pilot project in multiple counties to evaluate a system for the electronic filing, case processing and case management of civil cases and special proceedings filed in the General Court of Justice. The Administrative Office of the Courts may designate the case types which will be subject to mandatory electronic filing, case processing and case management during the pilot project. No county may be selected without the concurrence of the senior resident superior court judge, the chief district court judge, and the clerk of superior court. Notwithstanding the requirements of Chapters 1A and

Chapter 7A of the General Statutes, the Supreme Court and the Administrative Office of the Courts shall establish rules, regulations, costs, procedures and specifications for electronic filing, case processing and case management under the pilot. Provided, however, Rule 4 of the Rules of Civil Procedure shall govern service of process of pleadings that are currently required to be served pursuant to Rule 4 of the Rules of Civil Procedure.

SECTION 15.(b). Subsection (a) of this section expires June 30, 2009.

SECTION 16. G.S. 7A-49.5(c) reads as rewritten:

"(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.~~courts."

SECTION 17. G.S. G.S. 7A-177(b) reads as rewritten:

"(b) ~~Training~~ In addition to the basic training course required in subsection (a) of this section, continuing education courses shall be provided at such times and locations as necessary to assure that they are conveniently available to all magistrates without extensive travel to other parts of the State. ~~Courses shall be provided in Asheville for the magistrates from the western region of the State.~~"

SECTION 18. G.S. 7A-312 reads as rewritten:

"**§ 7A-312. Uniform fees for jurors; meals.**

(a) A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars ($12.00) for the first day of service and twenty dollars ($20.00) per day afterwards, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive forty dollars ($40.00) per day for each day of service in excess of five days. A grand juror shall receive twenty dollars ($20.00) per day. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees.

(b) Notwithstanding subsection (a) of this section, the 26th Judicial District may operate a pilot program in which a juror may waive payment of the per diem fees provided for in that subsection. A juror waiving the fee may designate that the fee be used for any of following services, if such services are provided in the district: (i) client treatment and service programs associated with a drug treatment or DWI treatment court program; (ii) courthouse self-help centers; (iii) courthouse child care centers; (iv) legal aid programs operated by a nonprofit corporation operating within the district; and (v) the Crime Victims Compensation Fund. If no such services are provided within the district, then waived fees are transferred to the Crime Victims Compensation Fund."

SECTION 19. G.S. 7A-314(f) reads as rewritten:

"(f) In 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, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable

from funds appropriated to the Administrative Office of the Courts. The court in order to facilitate the disposition of criminal or Chapter 50B cases during a session of court, may authorize the use of the court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases where an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c)."

SECTION 20. G.S. 7A-321 reads as rewritten:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

(a) 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.

(b) In attempting to collect the fines, fees, and costs owed by offenders not sentenced to supervised probation, the Department may:

(1) Assess a collection assistance fee if an amount due remains unpaid for 30 days after the time period allotted by the court. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due, whichever is less.

(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, and costs owed by offenders not sentenced to supervised probation.

(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.

(c) Should the Judicial Department use either of the methods listed in subdivisions (b)(1) and (2) above to collect fines, fees, and costs owed by offenders not sentenced to supervised probation, the department may not charge any additional cost of collection pursuant to G.S. 115C-437."

SECTION 21. Section 1 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. The remainder of the act is effective when it becomes law.

HOUSE BILL 573: Authorize Concealed Weapon/Other Court Changes

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 23, 2007
Introduced by:	Reps. Williams, Blue, Howard, Brubaker	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to First Edition H573-CSRC-61		

SUMMARY: House Bill 573 would authorize a district or superior court judge to carry a concealed handgun in a courthouse if the judge is there to discharge his or her official duties and has a valid concealed handgun permit.

The Proposed Committee Substitute makes a number of other changes related to the State Budget Act as it applies to the judicial branch, adds a new duty to the Director of the Administrative Office of the Courts (AOC), repeals certain provisions related to Drug Treatment Courts and creates a pilot for a system of electronic filing of court documents.

CURRENT LAW – Concealed handguns: A person in North Carolina may apply for and get a concealed handgun permit if the applicant meets all of the following criteria:

- Is a citizen of the United States and has been a resident of North Carolina for 30 or more days.
- Is 21 years of age or older.
- Does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.
- Has successfully completed an approved firearms safety and training course.
- Is not disqualified from receiving a permit under the provisions of G.S. 14-415.12(b), which provides that a sheriff shall deny a permit if the applicant:
  - Is ineligible to own a firearm under State or federal law.
  - Is under indictment for a felony.
  - Has been found guilty of a felony.
  - Is a fugitive from justice.
  - Is an unlawful user of controlled substances.
  - Has been found to be mentally ill.
  - Has been discharged from the armed forces under conditions other than honorable.
  - Has been found guilty of a crime of violence constituting a misdemeanor.
  - Has had entry of a prayer for judgment continued for a crime that would disqualify the applicant.
  - Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime that would disqualify the applicant.
  - Has been convicted of impaired driving within 3 years prior to the date of application.

A person who has been issued a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. Carrying a concealed handgun without a permit is a Class 2 misdemeanor on the first offense, punishable by up to 60 days and maximum $1,000 fine, and a Class I felony on a second or subsequent offense, punishable by up to 15 months and a fine in the discretion of the court.

Weapons in courthouses. G.S. 14-269.4 makes it unlawful to carry a deadly weapon in any building housing any court of the General Court of Justice. Article 54B makes clear that a concealed handgun permit does not authorize a person to carry a concealed handgun in any area prohibited by this section.

A violation of G.S. 14-269.4 is a Class 1 misdemeanor, punishable by up to 120 days and a fine in the discretion of the court.

State Budget Act – During the 2006 Session, the General Assembly replaced the Executive Budget Act with the State Budget Act (Chapter 143C). The act applies to all state agencies, which include the executive, judicial, and legislative branches of government.

BILL ANALYSIS:

Section 1 would create an exemption to the statute that makes it unlawful to carry a deadly weapon in courthouse. The exemption would allow a district court judge or a superior court judge to carry or possess a concealed handgun in a building housing a court of the General Court of Justice if: the judge is in the building to discharge his or her official duties; and the judge has a valid concealed handgun permit.

Sections 2 – 4 would make it clear that certain portions of the State Budget Act would not apply to the judicial branch.

Section 5 exempts growth in the operation of the courts from the calculations on the limitations in the growth of the General Fund operating budget.

Section 6 provides that, in the event of a shortfall in revenue receipts, the judicial branch would submit its own plan for reductions in expenditures. *This provision may violate Article III, Sec. 4 of the State Constitution which directs the Governor to "continually survey" revenue collections and expenditures and to "effect the necessary economies in State expenditures" to prevent expenditures from exceeding revenues.*

Section 7 would allow the judicial branch to make transfers between enacted budget for programs, objects, or line items provided the Chief Justice reports these transfers quarterly to the Joint Legislative Commission on Governmental Operations.

Section 8 would allow the judicial branch to create new personnel positions without seeking the approval of the Director of the Budget.

Section 9 would allow the judicial branch to apply for federal grants before providing a copy of the application to the Director of the Budget.

Section 10 removes judicial branch employees from the Governor's authority to suspend for failure to perform the duties of the employees' office or the provisions of the State Budget Act.

Section 11 directs the Director of the Administration Office of the Courts to analyze the use of contractual positions and convert positions to permanent State positions if it is in the best interests of the Judicial Department to do so.

Sections 12 - 13 repeals provisions related to Drug Treatment Courts and modify certain reporting requirements related to the drug treatment courts.

Section 14 establishes a pilot program to evaluate a system for electronic filing, case processing and case management.

Section 15 allows AOC to expend funds to pay for the cost of hardware and software for electronic filing.

Section 16 amends the law related to Magistrate training courses to reflect current practice.

EFFECTIVE DATE: The act would be effective when it becomes law. *H0573e1-SMRC-CSRC-61*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 657

Short Title:	Omnibus Civil Rights Act.	(Public)
Sponsors:	Senators Dannelly and Lucas.	
Referred to:	Judiciary II (Criminal).	

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE OMNIBUS CIVIL RIGHTS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Recodifications. – The following recodifications are made to integrate existing laws into the North Carolina Omnibus Civil Rights Act as enacted by this act and the Revisor of Statutes may make changes in the General Statutes that will reflect the results of these recodifications:

(1) Chapter 41A of the General Statutes is recodified as Article 4 of Chapter 169 of the General Statutes (entitled "State Fair Housing Act."). The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Commission or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace any reference to the North Carolina Human Relations Commission or derivative thereof with the phrase Division of Fair Housing and Public Accommodations or the appropriate derivative, consistent with the provisions of this act.

(2) G.S. 143B-391 and G.S. 143B-392 are recodified as Part 6 of Article 2 of Chapter 169 of the General Statutes (entitled "Human Relations Commission."). The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Commission of the Department of Administration or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace any reference to the North Carolina Human Relations Commission or derivative thereof with the phrase North Carolina Agency for Civil Rights or the appropriate derivative, consistent with the provisions of this act.

(3) G.S. 143B-426.34A and G.S. 143B-426.34B are recodified as Part 7 of Article 2 of Chapter 169 of the General Statutes (entitled "Martin Luther King, Jr. Commission."). The Revisor of Statutes is authorized

to delete any reference to the Martin Luther King, Jr. Commission of the Department of Administration or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace any reference to the Martin Luther King, Jr. Commission of the Department of Administration or derivative thereof with the phrase Martin Luther King, Jr. Commission of the North Carolina Agency for Civil Rights or the appropriate derivative, consistent with the provisions of this act.

(4) G.S. 7A-759 is recodified as G.S. 169-2-10 in Part 3 of Article 2 of Chapter 169 of the General Statutes. The Revisor of Statutes is authorized to delete any reference to the Office of Administrative Hearings, the Chief Administrative Law Judge, and the Civil Rights Division of the Office of Administrative Hearings or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace the Office of Administrative Hearings, the Chief Administrative Law Judge, and the Civil Rights Division of the Office of Administrative Hearings, or derivative thereof, with the phrases Division of Fair Employment Practices, Commissioner of the North Carolina Agency for Civil Rights, and Director of the Division of Fair Employment or the appropriate derivatives, consistent with the provisions of this act.

(5) Chapter 99D of the General Statutes is recodified as Article 5 of Chapter 169 of the General Statutes (entitled "Interference With Civil Rights."). The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Commission or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace the North Carolina Human Relations Commission, or derivative thereof, with the phrase Division of Community Relations and Hate Crimes or the appropriate derivative, consistent with the provisions of this act.

SECTION 1.(b) Transfers of Agencies, Powers, and Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the North Carolina Agency for Civil Rights created by this act with all of the elements of a Type I transfer as defined by G.S. 143A-6:

(1) Civil Rights Division, from the Office of Administrative Hearings;

(2) Human Relations Commission, from the Department of Administration; and

(3) Martin Luther King Commission, from the Department of Administration.

The Community Relations section previously within the Department of Administration's Human Relations Commission (including staff, funding, grants, and

other allocated resources) is hereby transferred to the Division of Community Relations and Hate Crimes.

All power and authority previously conferred upon the North Carolina Human Relations Commission with respect to the enforcement of the State Fair Housing Act and its designation as a deferral agency, including any and all related contracts and administrative regulations, are hereby transferred to the Division of Fair Housing and Public Accommodations of the Agency for Civil Rights, except that the North Carolina Human Relations Commission shall retain its powers as to final agency decisions and contested case hearings under Chapter 150B of the General Statutes.

The Division of Fair Employment Practices is authorized and directed to carry out the responsibilities conferred upon it by Article 6 of Chapter 126 of the General Statutes, as the successor to the former Civil Rights Division of the Office of Administrative Hearings.

The rights, duties, and responsibilities conferred upon the Division of Fair Employment Practices by this act replace all grants of authority previously granted the North Carolina Human Relations Commission under G.S. 143-422.3 with regard to the investigation and resolution of charges of employment discrimination.

Except as otherwise expressly provided by law, the Commissioner of the North Carolina Agency for Civil Rights may enter into deferral agency agreements and cooperative agreements with the federal government, State agencies, or local governments, whether jointly or severally, in carrying out assigned functions and duties.

SECTION 1.(c) Any previous assignment of duties of a quasi-legislative and quasi-judicial nature by the Governor or General Assembly shall have continued validity with the transfer under this act of any affected commission, board, division, or office.

SECTION 1.(d) Repeals. – The following portions of the General Statutes are repealed:

(1) G.S. 143-422.1 is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 169.**

"**Omnibus Civil Rights Act.**

"Article 1.

"General Provisions.

"Part 1. Definitions.

"**§ 169-1-1. Definitions.**

(a) Except as otherwise specifically provided, the following definitions apply in this Chapter:

(1) Agency. – The North Carolina Agency for Civil Rights.

(2) Commissioner. – The Commissioner of the North Carolina Agency for Civil Rights.

(3) Complaining party or charging party. – Includes the Divisions of the Agency, the Commissioner, the General Counsel of the Agency; and any person who files a complaint or charge with the Agency.

(4) Constituent entity. – One of the offices, divisions, commissions, and boards transferred to, or created under, the auspices of the Agency.
(5) DCRHC. – The Agency's Division of Community Relations and Hate Crimes.
(6) Demonstrates. – Meets the burden of production and persuasion.
(7) DFEP. – The Agency's Division of Fair Employment Practices.
(8) DFHPA. – The Agency's Division of Fair Housing and Public Accommodations.
(9) Disability. – Any physical or mental condition or characteristic that renders a person a person with a disability or results in a person being perceived as a person with a disability.
(10) Disabling condition. – Any condition or characteristic that renders a person a person with a disability.
(11) Hate crime. – As defined in G.S. 14-3(c), G.S. 14-12.2 through 14-12.11, G.S. 14-12.12(a) and (b), G.S. 14-12.13 through 14-12.15, G.S. 14-49(b1), G.S. 14-62.2, G.S. 14-401.14, G.S. 15A-1340.16(d)(17), or any other statutes designated or enacted as hate crimes by the General Assembly.
(12) Hate-motivated action. – Acts of ethnic or racial intimidation or acts motivated by animosity based upon a person's actual or perceived race, color, national origin, religion, age, sex, or physical or mental disability.
(13) National origin. – Includes ancestry.
(14) Reasonable accommodation. – As defined in G.S. 168A-3.
(15) Undue hardship. – As defined in G.S. 168A-3.

"Part 2. General Provisions.

"**§ 169-1-2. Title; purpose.**

(a) This Chapter shall be known and may be cited as the North Carolina Omnibus Civil Rights Act.

(b) The purpose of this Chapter is to ensure that every individual within North Carolina is afforded an equal opportunity to enjoy a full and productive life by providing the means to address and attempt to remedy the harmful effects of unlawful discrimination and to eradicate discriminatory practices.

"**§ 169-1-3. Findings and declaration of civil rights.**

(a) The General Assembly finds that the opportunity for all to obtain employment without discrimination because of an individual's or group's actual or perceived race, color, national origin, religion, age, sex, or physical or mental disability is in the best interests of all of the people of the State and hereby establishes a statutory civil right to fair employment where the employer regularly employs 15 or more employees.

(b) The General Assembly finds that the opportunity for all to obtain the use, occupancy, or ownership of housing without discrimination because of an individual's or group's actual or perceived race, color, national origin, religion, sex, physical or

mental disability, or familial status, as to housing, is in the best interest of all the people of the State and hereby establishes a statutory civil right to fair housing.

(c) The General Assembly finds that the opportunity for all to obtain the full and equal use, accommodations, and advantages of any place of public accommodation, as defined in Article 5 of this Act, without discrimination because of an individual's or group's actual or perceived race, color, national origin, religion, sex, physical or mental disability is hereby established as a statutory civil right to use of public accommodations.

(d) The General Assembly finds that the opportunity for all to live and visit in this State without fear of victimization from the commission, attempted commission, or threat of commission of a hate crime on account of an individual's actual or perceived race, color, national origin, religion, sex, physical or mental disability is hereby established as a statutory civil right.

"**§ 169-1-4. Retaliation prohibited.**

It shall be unlawful for any person, organization, or agency covered by this Chapter to discriminate against or retaliate against any individual because the individual has opposed any practice made unlawful under this Chapter or because the individual has made a charge or has testified, assisted, or participated in any manner in an investigation, proceeding, inquiry, or hearing under this Chapter.

"**§ 169-1-5. Limited waiver of sovereign immunity.**

The sovereign immunity of the State is waived for the limited purpose of allowing actions authorized by this Chapter, including the granting of injunctive relief, awarding of damages and other appropriate relief, and issuance and enforcement of subpoenas and contempt orders. Consistent with the waiver limitation in G.S. 143-300.35, the monetary relief in employment actions against the State pursuant to this Chapter shall not exceed the amounts authorized under G.S. 143-299.2 or the amount authorized under 42 U.S.C. § 2000e, et seq., as amended, whichever is less.

"Article 2.

"North Carolina Agency for Civil Rights.

"Part 1. Creation and Functions.

"**§ 169-2-1. Agency for Civil Rights created; purpose.**

(a) There is created the North Carolina Agency for Civil Rights. The Agency is established as an independent agency to ensure that (i) charges of discrimination are provided a fair and impartial review and (ii) the civil rights of individuals in this State are respected and protected to the fullest extent of the law.

The Agency shall have all powers reasonably necessary to accomplish its purposes, including:

(1) Enforcement and oversight of those statutory duties enumerated in this Chapter.

(2) Development of compliance standards applicable to public and private entities covered by this Chapter.

(3) Tasks related to any duties as may be periodically assigned by the General Assembly or requested by the Governor.

(4) Activities it deems necessary to fulfill the enumerated and assigned duties to advance the declared purpose of this Chapter.

(b) The Agency shall be organized into at least the following divisions:

(1) Community Relations and Hate Crimes.

(2) Fair Employment Practices.

(3) Fair Housing and Public Accommodations.

"**§ 169-2-2. Commission, council, and board appointments; qualifications; terms; compensation; removal.**

All appointments and removals of chairs and members of commissions and boards transferred to this Chapter shall continue to be made in the same manner as before the transfer authorized in the Chapter, consistent with the provisions of G.S. 143B-13 and 143B-16; and members of commissions shall be compensated in the same manner as provided in General Statutes 143B-15.

"**§ 169-2-3. Seal; identification and badges.**

(a) The Agency shall adopt an official seal which shall be used on letterhead and all official communications of the Agency and its constituent Divisions and programs.

(b) The Agency's official seal shall be used to authenticate the Agency's acts and proceedings, and the courts shall take judicial notice thereof. The certificate of the Commissioner under the seal of the Agency for Civil Rights and attested by the Senior Administrative Clerk shall be accepted in evidence in any administrative or judicial proceedings in any court of this State as adequate and sufficient proof of the acts and proceedings therein.

(c) Any field agent, examiner, investigator, or other personnel of the Agency for Civil Rights who is authorized by this Chapter to collect documents, audit books, inspect premises of individuals or business firms, or engage in any other field investigative activities shall be furnished with a badge and identification card signed by the Commissioner of the Agency for Civil Rights.

"**§ 169-2-4. Public records; confidentiality.**

(a) All privileged patient medical records in the possession of the Agency and its constituent commissions and boards shall neither be made nor considered public records pursuant to G.S. 132-1.

(b) The standards of confidentiality established by federal statute or regulation for discrimination charges and as provided hereinafter in this Chapter shall apply to all cases investigated by the Agency.

(c) Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under federal statute or regulation.

(d) Any officer or employee of the Agency who violates this section shall be subject to disciplinary action up to and including dismissal from employment.

"**§ 169-2-5. Copies of public records.**

Upon request and at such reasonable charges as the Commissioner prescribes, Division Directors and the Commissioner shall furnish, pursuant to written requests, photostatic or other copies of any document which is a matter of public record as determined by the exclusions and confidentiality provisions set forth in this Chapter and

other applicable statutory provisions. A certified copy may be provided for an additional charge.

"**§ 169-2-6. Agency and commission investigations and orders; subpoenas.**

(a) Unless otherwise prohibited by law, the Agency through its Commissioner and divisions, and any Commission or board covered by this Chapter, may order an investigation into areas of concern over which it has been granted investigative authority and may issue subpoenas for the appearance of witnesses and the production of documents as provided in this Chapter.

(b) In proceedings before the Agency, its divisions or any commission or board covered by this Chapter, when a person refuses to respond to a subpoena or refuses to take an oath or affirmation as a witness or thereafter refuses to be examined or refuses to obey any lawful order of a covered commission or board contained in this Chapter, the Commissioner of the Agency may apply to the Superior Court of Wake County, or to the superior court of the county where the proceedings are held, for an order directing that person to take the requisite action. Any person's willful failure to comply with an order so issued by the court may result in the person being found in civil or criminal contempt.

"**§ 169-2-7. Misrepresentation and fraud; penalties.**

Whoever shall misrepresent, falsify, or provide fraudulent information or evidence or whoever shall forcibly resist, oppose, impede, intimidate, or interfere with a duly authorized agent, representative, or investigator of the Agency while engaged in the performance of duties under this Chapter shall be subject to the assessment of civil penalties of not more than one thousand dollars ($1,000) per incident.

"Part 2. Commissioner of the Agency.

"**§ 169-2-8. Commissioner; functions; duties.**

(a) The Agency shall have a Commissioner as its ranking administrative officer, who shall be nominated by the Governor, subject to approval by the General Assembly, for a term of eight years. The salary of the Commissioner shall be the same as that fixed from time to time for superior court judges. The term of the initial Commissioner shall begin July 1, 2007. An individual may serve more than one term as Commissioner.

The Commissioner, as the State's principal civil rights official, shall have the following powers and duties:

(1) To coordinate the State's efforts and information in the several areas of civil rights oversight and enforcement governed by this Chapter and otherwise under the Agency's purview.

(2) To coordinate the Agency's advocacy, community relations, and education functions as established by this Chapter.

(3) To ensure that rules are adopted by the Agency in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(4) To formulate and administer the policies of the Agency and its constituent entities.

(5) To prepare an annual unified budget request for the Agency and its constituent entities.

(6) To present a report on the status of civil rights in this State to the General Assembly and Governor beginning in May 2009, and not less than every two years thereafter.

(7) To serve as a liaison with State, local, and federal governmental entities involved in advocacy and enforcement of civil rights.

(b) The Commissioner shall appoint deputy commissioners, a General Counsel as provided by Part 8 of this Article, division directors, examiners, investigators, and other employees and agents necessary to carry out the charge of the Agency. The Commissioner shall fix the compensation of Agency employees. Except for the deputy commissioners and the General Counsel, employees of the Agency are subject to the provisions of Chapter 126 of the General Statutes, the State Personnel Act.

"§ 169-2-9. Organizational matters; public hearings; subpoenas; injunctions.

(a) The Commissioner shall be responsible for management functions of the constituent entities under the Agency's auspices, including responsibility for staffing, reorganization, assignment of functions, management, custody of records, budget preparation and reporting, and preparation of plans and reports in the manner set forth G.S. 143B-9, 143B-10, and 143B-12.

(b) The Commissioner may hold public hearings and consult with and use the services of other State agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the preparation of reports to the General Assembly and the Governor on legislative, budgetary, and administrative matters related to the accomplishment of the work of the Agency.

(c) Employees of the Agency designated by the Commissioner shall, in investigating charges assigned to the respective divisions under this Chapter, have the authority to administer oaths and affirmations, and, under specific authorization of the Commissioner and this Chapter, issue subpoenas.

(d) Where the Commissioner of the Agency concludes, at any time following the filing of a complaint under this Chapter, that prompt judicial action is necessary to prevent immediate and irreparable harm, the Commissioner may commence a civil action in the Superior Court of Wake County or any other court of competent jurisdiction, and that court may grant an appropriate preliminary or special injunction pending final disposition of the complaint. Any order or relief shall be granted in accordance with Chapter 1A-1, Rule 65 of the North Carolina Rules of Civil Procedure and any applicable local rules. Where the State or other public entity is involved, the highest ranking official of that entity shall be named as the respondent for purposes of any motions to compel or injunctions. This grant of authority is in addition to the authority of the Agency to file actions and seek injunctive relief as set forth elsewhere in this Chapter.

"Part 3. Division of Fair Employment Practices.

"§ 169-2-10. Division of Fair Employment Practices; deferral agency.

(a) The Agency is designated to serve as the State's deferral agency for cases deferred by the U. S. Equal Employment Opportunity Commission as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq., and the Americans with

Disabilities Act, 42 U.S.C. § 12101, et seq., for charges filed by employees covered under Article 3 of this Chapter, the State Fair Employment Act, and shall have all the powers and authority necessary to function as a deferral agency.

(b) There is created the Division of Fair Employment Practices within the North Carolina Agency for Civil Rights to execute the functions of a deferral agency.

"**§ 169-2-11. Prevention.**

The Agency, through its Division of Fair Employment Practices, is empowered as provided in Article 3 of this Chapter to prevent any person from engaging in any employment practice declared unlawful in this Chapter.

"**§ 169-2-12. Director of the Division of Fair Employment Practices; power and duties.**

(a) The head of the Division of Fair Employment Practices is a Director appointed by the Commissioner of the Agency.

(b) As authorized by the Commissioner, the Director may from time to time make, amend, and rescind any rules, forms, and orders necessary to carry out the provisions of Article 3 of this Chapter.

(c) The Director shall contract with the U.S. Equal Employment Opportunity Commission for the Agency for Civil Rights to serve as a deferral agency. The Director shall provide a copy of each contract to the Commissioner.

(d) The Director shall have responsibility within budget limitations to hire and maintain a sufficient staff of employees to carry out the duties and functions of the Division of Fair Employment Practices regarding the receipt and investigation of charges of employment discrimination and the filing of actions in State courts as provided in Article 3 of this Chapter.

(e) The Director shall provide for educational, promotional, and technical training and outreach activities by staff of the Division and the Agency in the area of compliance with Article 3 of this Chapter for the general benefit of employees, employers, and the public.

"**§ 169-2-13. Access to records.**

In investigating charges filed pursuant to Article 3 of this Chapter, an employee of the Division of Fair Employment Practices shall have access at reasonable times to premises, records, and documents relevant to the charge and shall have the right to examine, photograph, and copy evidence. Any challenge to the deferred charge under investigation shall not constitute grounds for denial or refusal to produce or allow access to the investigative evidence.

"**§ 169-2-14. Initial determinations, cause determinations, and final agency decisions.**

(a) The Division of Fair Employment Practices shall make an Initial Determination as to whether reasonable cause exists to believe that the charge is true as promptly as possible, and so far as practicable, not later than 160 days from the filing of the charge under Article 3 of this Chapter.

(b) Where the Division of Fair Employment Practices determines, after investigation, that there is not reasonable cause to believe that the charge is true, it shall issue a No Cause Determination on the charge with findings, which shall constitute the

final agency action on the charge and shall promptly notify the person claiming to be aggrieved and the respondent of its action.

(c) Where the Division of Fair Employment Practices determines after investigation that reasonable cause exists to believe that the charge is true, the Division shall issue a Cause Determination and notify the charging party and the respondent. Thereafter, the Division shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

(d) In the event that informal endeavors fail to settle or resolve the alleged unlawful employment practice, the Director of the DFEP shall refer the Cause Determination to the Office of General Counsel for further consideration. The charging party and the respondent shall receive formal notice of the referral. The notice of referral shall indicate that a Final Agency Decision will be issued by the Commissioner of the Agency as promptly as possible, and so far as practicable, within 60 days from the date of the referral to the Agency's Office of General Counsel.

(e) The Commissioner of the Agency shall issue Final Agency Decisions on Cause Determinations which are binding on the parties. The Commissioner may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or regulations. In addition, the Commissioner may monitor compliance with any negotiated settlement, conciliation, and agreement entered into.

"**§ 169-2-15. Administrative rules and policies.**

The Director of the Division of Fair Employment Practices shall develop administrative rules and policies, as assigned by the Commissioner, to carry out the duties and responsibilities of the Division under Article 3 of this Chapter.

"**§ 169-2-16. State court actions; sovereign immunity waiver.**

(a) The Director of the Division of Fair Employment Practices may file actions in State court on behalf of one or more affected employees. Any person aggrieved shall have the right to intervene in that action.

(b) In any actions filed pursuant to subsection (a) of this section, the court may restrain and enjoin future acts, may compel compliance, and may award damages to the injured person to the same extent permissible in actions brought directly by applicants, employees, and former employees. Where the State or other public entity is involved, the highest ranking official of the public entity shall be named as the respondent for purposes of any motions to compel or injunctions. Sovereign immunity shall not be available as a defense in these actions.

(c) In any action in which an employer fails to comply with a final order or judgment issued in a civil action brought pursuant to Article 3 of this Chapter by or on behalf of an aggrieved person, the DFEP, or the Agency, the DFEP may commence proceedings to compel compliance with the order or judgment. Where the State or other public entity is involved, the highest ranking official of the public entity shall be named as the respondent for purposes of any motions to compel or injunctions. Sovereign immunity shall not be available as a defense in such actions.

"**§ 169-2-17. Injunctive relief; sovereign immunity waiver.**

Whenever, after a charge is filed with the Division of Fair Employment Practices, the Director of the Division concludes that prompt judicial action is necessary to carry out the purposes of the State Fair Employment Act, the Division may bring an action for appropriate temporary or preliminary relief pending the final agency disposition of such charge. Any order granting temporary or preliminary relief shall be issued in accordance with Rule 65 of the North Carolina Rules of Civil Procedure, and it shall be the duty of the State courts having jurisdiction over proceedings under this Chapter to assign cases for hearing at the earliest practicable date and to cause such cases to be expedited in every way. Where the State or other public entity is involved, the highest ranking official of that entity shall be named as the defendant for purposes of any motions to compel or injunctions. Sovereign immunity shall not be available as a defense in these actions.

"Part 4. Division of Fair Housing and Public Accommodations.

"**§ 169-2-19. Deferral agency; establishment of division; transfer of authority.**

(a) The North Carolina Agency for Civil Rights is designated to serve as the State's deferral agency for cases deferred by the U.S. Department of Housing and Urban Development as provided in Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. § 3601, et seq.) and in Article 4 of this Chapter and shall have all the powers and authority necessary to function as a deferral agency.

(b) There is hereby established the Division of Fair Housing and Public Accommodations to execute the functions of a deferral agency as provided in Article 4 of this Chapter.

"**§ 169-2-20. Purpose.**

The Division shall function in its own name and on behalf of the Agency to enforce the State Fair Housing Act, to carry out the Agency's function as a deferral agency, and to enforce and administer the provisions of Articles 4 and 5 of this Chapter.

"**§ 169-2-21. Prevention.**

The Agency, through its Division of Fair Housing and Public Accommodations, is empowered to prevent any person from engaging in housing and public accommodations practices and actions declared unlawful by this Civil Rights Act Chapter 169 of the General Statutes through the enforcement of its provisions and to seek redress and accountability for such unlawful practices and actions as authorized by this Act.

"**§ 169-2-22. Director of the Division of Fair Housing and Public Accommodations; power and duties.**

(a) The head of the Division of Fair Housing and Public Accommodations is a Director appointed by the Commissioner of the Agency. The Director shall be responsible for hiring and maintaining employees to carry out the functions of the Agency related to the enforcement of Articles 4 and 5 of this Chapter.

(b) The Director of the DFHPA has the powers and duties conferred on that position by Articles 4 and 5 of this Chapter and the laws of this State and, as authorized by the Commissioner, may from time to time make, amend, and rescind rules, forms, and orders necessary to carry out the provisions of Articles 4 and 5 of this Chapter.

(c) The Director of the DFHPA is authorized and directed to contract with the U.S. Department of Housing and Urban Development for the Agency for Civil Rights to serve as a deferral agency. The Director shall provide a copy of each such contract to the Commissioner of the Agency for Civil Rights.

(d) The Commissioner of the Agency for Civil Rights is authorized to make available to assist the Director of the DFHPA in carrying out the responsibilities assigned to the Division such additional resources and staff of the Agency, including the Office of General Counsel, as deemed necessary.

(e) The Director of the DFHPA shall oversee the provision of educational and technical training and outreach activities by staff of the DFHPA and the Agency in the area of compliance with Articles 4 and 5 of this Chapter.

"Part 5. Division of Community Relations and Hate Crimes.

"**§ 169-2-24. Division of Community Relations and Hate Crimes.**

(a) There is hereby established within the Agency the Division of Community Relations and Hate Crimes.

(b) In addition to those responsibilities set forth elsewhere in this Chapter, the Agency shall function as a resource for resolving community conflicts and tensions arising from differences of race, color, sex, religion, and national origin. The Agency, through its Community Relations and Hate Crimes Division, shall provide to State and local governments, public and private organizations, and community groups community relations services to assist in the prevention and resolution of racial, religious, gender, and ethnic tensions, incidents and civil disorders; to educate students, law enforcement, and the community; and to assist in the restoration of stability and harmony. The primary functions of the DCRHC are as follows:

(1) To provide assistance to communities and individuals in resolving disputes, disagreements, difficulties, or other serious conflicts based on racial, religious, or ethnic issues which impair the rights of persons in those communities under the Constitution or laws of North Carolina.

(2) To conduct investigations and in appropriate cases file suit as provided in Article 6 of this Chapter for interference with civil rights.

(3) To conduct preliminary investigations of hate crimes and hate-motivated actions and take any other actions as may be authorized by this Chapter.

The DCRHC may offer its community relations services in cases where there are serious disputes, disagreements, or other conflicts when, in the judgment of the DCRHC Director, harmonious relations among the citizens of the communities involved, or with the State, or both, are threatened. The Agency may offer these services either (i) upon its own initiative as determined by the Director of the Division of Community Relations and Hate Crimes or by the Commissioner of the Agency or (ii) upon the request of an appropriate State or local official or other interested person, including district attorneys, police chiefs, mayors, school superintendents, religious organizations, and other local or State authorities, and members of the General Assembly.

"**§ 169-2-25. Director of the Division of Community Relations and Hate Crimes.**

(a) To carry out the functions assigned to the Division of Community Relations and Hate Crimes, a Director shall be appointed by the Commissioner of the Agency. The Director of DCRHC shall serve as the senior administrative officer of the Division and shall be responsible for hiring and maintaining employees to carry out the functions of the Agency related to the enforcement of Articles 6 and 7 of this Chapter.

(b) As authorized by the Commissioner, the Director of DCRHC may from time to time make, amend, and rescind the rules, forms, and orders necessary to carry out the provisions of Articles 6 and 7 of this Chapter.

(c) The Director of DCRHC shall assist the Human Relations Commission in furtherance of the Commission's duties under this Chapter by assignment of community relations staff to work with and assist in the development of local good neighbor councils and human relations commissions.

(d) The Director of DCRHC shall oversee the provision of educational and technical training and outreach activities by staff of the Division and the Agency in the area of compliance with Articles 6 and 7 of this Chapter.

"**§ 169-2-26. Cooperation with other agencies; assistance and information as confidential.**

The Director of the Division of Community Relations and Hate Crimes shall, whenever possible, seek and utilize the cooperation of appropriate public entities. In providing community relations services, the activities of all employees of the Division shall be conducted in confidence and without publicity. Preliminary investigations regarding alleged hate crimes shall be conducted in accordance with the provisions of Article 7 of this Chapter. Except as provided by law, no DCRHC or Agency employee or agent shall make public, in any manner, information gathered or received while providing community relations services or conducting preliminary investigations. Public announcements may be made consistent with protections provided in this Chapter, as deemed appropriate by the Commissioner of the Agency or the DCRHC Director.

"Part 6. Human Relations Commission.

"Part 7. Martin Luther King, Jr. Commission.

"Part 8. Office of General Counsel.

"**§ 169-2-28. Office of General Counsel.**

(a) There is established within the Agency an Office of General Counsel. The General Counsel shall be appointed by the Commissioner of the Agency and is exempt from the State Personnel Act. With the approval of the Commissioner, the General Counsel may appoint staff attorneys for the Agency's Divisions.

(b) Notwithstanding the provisions of G.S. 114-2, the Agency and each of its constituent entities shall be represented by the Agency's General Counsel or a staff attorney assigned by the General Counsel.

"Article 3.

"State Fair Employment Act.

"Part 1. Title and Legislative Findings.

"**§ 169-3-1. Title of Article.**

This Article shall be known and may be cited as the "State Fair Employment Act."

"**§ 169-3-2. Legislative findings; effect of precedent.**

(a) The General Assembly finds that the practice of denying employment opportunity and discriminating in the terms and conditions of employment because of a person's or group's actual or perceived race, color, national origin, religion, age, sex, or physical or mental disability foments domestic strife and unrest, substantially and adversely affects the interests of employees, employers, and the public in general, and deprives the State of the fullest utilization of its capacities for advancement and development. It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgement in violation of law by covered employers and to support the enforcement of the civil rights laws of this State prohibiting employment discrimination.

(b) The General Assembly finds that the State's Fair Employment Practices Act is an adaptation of portions of Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991, 42 U.S.C. § 1981a.; and 42 U.S.C. § 2000e, et seq., as amended, with the purpose and intention of creating one uniform, comprehensive standard applicable to all covered employers in North Carolina.

(c) The General Assembly finds that legal precedent from State and federal courts interpreting and applying the civil rights laws cited in subsection (b) of this section provide relevant guidance in the construction of this Article except where exclusions or omissions have been made or where the context establishes the application of precedent would be contrary to the public policy of this State as set forth in this Chapter.

"Part 2. Unlawful Employment Practices.

"**§ 169-3-3. Unlawful employment practices; motivating factors.**

(a) It shall be an unlawful employment practice for an employer covered by this Chapter to:

(1) Fail or refuse to hire or promote, or to discharge any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions, benefits, or privileges of employment, because of such individual's race, color, sex, religion, national origin, age, or physical or mental disability.

(2) Limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an employee's status because of the individual's race, color, sex, religion, national origin, age, or physical or mental disability.

(3) Discriminate against any of his or her employees or applicants for employment, because the employee or applicant has opposed any practice made an unlawful employment practice by this Chapter, or because the employee or applicant has participated in any manner in an investigation, proceeding, or hearing under this Chapter.

(4) Control an apprenticeship or other training or retraining, including on-the-job training programs, in order to discriminate against any qualified individual because of the individual's race, color, religion, sex, age, national origin, or physical or mental disability in admission

to or employment in any program established to provide apprenticeship or other training.

(5) Print, publish, or cause to be printed or published any notice or advertisement relating to employment by the employer or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(b) It shall be an unlawful employment practice for an employer, including an employment agency, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, religion, sex, national origin, or physical or mental disability.

(c) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise discriminate against any individual because of his race, color, sex, religion, national origin, age, or physical or mental disability.

(d) Except as otherwise provided in this Article, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, national origin, age, or disability was a motivating factor for any employment practice, even though other factors also motivated the practice.

"**§ 169-3-4. Disparate impact.**

(a) An unlawful employment practice claim based on disparate impact under this Article shall be subject to the following proof requirements:

(1) An unlawful employment practice based on disparate impact is established under this Article only if:

a. A complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or

b. The complaining party makes the demonstration described in subsection (c) of this section with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(b) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subdivision (1) of subsection (a) of this section:

(1) The complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate that the elements of a

respondent's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one employment practice.

(2) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that the practice is required by business necessity.

(c) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this Chapter.

"**§ 169-3-5. Exemptions; limitations.**

(a) Nothing in this Article shall apply to any business or enterprise on or near an Indian reservation with regard to any publicly announced employment practice of that business or enterprise under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation.

(b) Nothing in this Article shall apply to a religious corporation, association, educational institution, or society with regard to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(c) It shall not be an unlawful employment practice:

(1) For an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, or for an employer or training or retraining programs to admit or employ any individual in any such program on the basis that the individual's religion, sex, age, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(2) For a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of that religion.

(d) It shall not be an unlawful employment practice for an employer or employment agency to fail or refuse to hire and employ any individual for any position or for an employer to discharge any individual from any position if (i) the occupancy of that position, or access to the premises in or upon which any part of the duties of that position is performed or is to be performed, is subject to any requirements imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any

Executive Order of the President and (ii) the individual has not fulfilled or has ceased to fulfill that requirement.

(e) It shall not be an unlawful employment practice for an employer to:

(1) Apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if the differences are not the result of an intention to discriminate because of race, color, religion, sex, age, national origin, or disability.

(2) Give and to act upon the results of any professionally developed ability test provided that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, age, national origin, or disability.

(3) Differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of Section 6(d) of the Fair Labor Standards Act of 1938, as amended.

(f) Nothing in this Chapter shall be construed to require any employer or employment agency to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, age, national origin, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, or disabled condition employed by any employer, referred or classified for employment by any employment agency, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, age, national origin, or disabled conditions in this State, or any community thereof.

(g) This Article does not prohibit an employer or employment agency from developing and using programs aimed at targeted recruitment of qualified applicants to address disparities in total number or percentages of individuals within its workforce and applicant pools with respect to race, color, religion, sex, age, national origin, or disability.

(h) An employment practice that implements, and is within, the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution of the United States, the North Carolina Constitution, or under a federal or State civil rights law may not be challenged:

(1) By a person who, prior to the entry of that judgment or order had:

a. Actual notice of the proposed judgment or order sufficient to apprise the person that the judgment or order might adversely affect the interests and legal rights of that person and that an opportunity was available to present objections to the judgment or order by a future date certain; and

b. A reasonable opportunity to present objections to the judgment or order; or

(2) By a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(i) Nothing in this Article shall be construed to:

(1) Alter the standards for intervention under North Carolina Rules of Civil Procedure or apply to the rights of successful interveners.

(2) Apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Fair Employment Practices Division or the Equal Employment Opportunity Commission.

(3) Prevent challenges to a litigated or consent judgment or order on the grounds that such judgment or order was obtained through collusion or fraud or is transparently invalid or was entered by a court lacking subject matter jurisdiction.

(4) Authorize or permit the denial to any person of the due process of law required by the Constitution.

(j) Any action not precluded under this section that challenges an employment consent judgment or order shall be brought in the court, and if possible before the judge, that entered that judgment or order. Nothing in this subsection shall preclude a transfer of an action pursuant to applicable change of venue rules where appropriate.

(k) Nothing in this Chapter shall be construed to repeal or modify any federal, State, or local law creating special rights or preferences for veterans.

(l) Nothing in this Article or Article 4 shall be construed to reduce or eliminate any rights or preferences conferred with respect to employment and employment discrimination by Chapter 168 of the General Statutes, Handicapped Persons, and Chapter 168A of the General Statutes, the Persons with Disabilities Act.

"**§ 169-3-6. Filing period; dual filing.**

(a) Applicants, employees, or former employees covered under this Article shall have 180 days from the date of the alleged violation to file a charge of unlawful employment discrimination as specified in G.S. 169-3-3. Thereafter, up to the 300th day from the date of the alleged violation, covered individuals may file directly with the U.S. Equal Employment Opportunity Commission.

(b) Filing with the Agency's Division of Fair Employment Practices under this Article shall immediately affect a dual filing with the U.S. Equal Employment Opportunity Commission.

(c) Covered State employees may file with the Division of Fair Employment Practices under this Article without first filing an internal grievance, but the time for such internal filing with an agency is not tolled by filing under the State Fair Employment Act.

"Part 3. Enforcement Provisions.

"**§ 169-3-7. Enforcement provisions.**

(a) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, alleging that an employer or employment agency has engaged in an unlawful employment practice, the Division of Fair Employment shall serve a notice of the charge (including the date, place, and circumstances of the alleged unlawful employment practice) on such employer or employment agency (hereinafter referred to as the "respondent") within 10 days and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Division of Fair Employment requires. Charges shall not be made public by the Division. If the Division determines after the investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Division determines after such investigation that there is reasonable cause to believe that the charge is true, the Division shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Division, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be subject to civil penalties of not more than one thousand dollars ($1,000) per violation. The Division shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than 120 days from the filing of the charge.

(b) A charge under this section shall be filed within 180 days after the alleged unlawful employment practice occurred, and notice of the charge (including the date, place, and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within 10 days thereafter. For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(c) If within 30 days after a reasonable cause finding has been made following investigation of a charge filed with the Division of Fair Employment, the Division has been unable to secure from the respondent a conciliation agreement acceptable to the Division, the Division may bring a civil action against any respondent in any State superior court as provided in this Article. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Division. If within 90 days from service upon the parties of notice of the reasonable cause finding, the Division has not filed a civil action under this section or has not entered into a conciliation agreement to which the person aggrieved is a party, the Division shall so notify the person aggrieved, and within 90 days after the giving of such notice, a civil action may be brought against the respondent named in the charge by the person claiming to be aggrieved. Upon

request, the court may, in its discretion, stay further proceedings for not more than 60 days pending the termination of State or local proceedings or further efforts of the Division to obtain voluntary compliance. If the Division does not find reasonable cause following investigation of a filed charge, the person claiming to be aggrieved may file a civil action in State court against the respondent within 90 days after receipt of the notice of the decision of the Division of Fair Employment Practices.

(d) Whenever a charge is filed with the Division of Fair Employment and the Division concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Division may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with Rule 65 of the North Carolina Rules of Civil Procedure. It shall be the duty of the court having jurisdiction over proceedings under this subsection to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

"§ 169-3-8. State court jurisdiction.

(a) Each State superior court shall have jurisdiction over actions brought under this Article. The action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to the practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the defendant is not found within that district, then the action may be brought within the judicial district in which the defendant has its principal office.

(b) It shall be the duty of the senior resident superior court judge in the judicial district in which the case is pending to designate immediately a judge in the district to hear and determine the case. In the event that no superior court judge in the district is available to hear and determine the case, the senior resident superior court judge shall certify this fact to the Office of Administration of the Courts for designation of a judge from another judicial district, a retired judge, or a special superior court judge approved by that Office, who shall hear and determine the case. It shall be the duty of the judge designated pursuant to this section to schedule the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If that judge has not scheduled the case for trial within 120 days after issue has been joined, that judge may appoint a referee pursuant to Rule 53 of the North Carolina Rules of Civil Procedure.

"§ 169-3-9. Remedies in court actions.

(a) If the court in which an action has been brought pursuant to this Act finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer or employment agency, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue

from a date more than two years prior to the filing of a charge with the Division. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(b) No order of the court shall require the hiring, reinstatement, or promotion of an individual as an employee, or the payment to that individual of any back pay, if that individual was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, national origin, age, or disability, or in violation of G.S. 169-3-3(b) of this Act.

(c) On a claim in which an individual proves a violation under G.S. 169-3-3(f) of this Act and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court:

(1) May grant declaratory relief, injunctive relief (except as provided in subdivision (2) of this subsection), and attorneys' fees and costs demonstrated to be directly attributable only to the pursuit of a claim under G.S. 169-3-3(f) of this Act; and

(2) Shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment described in subsection (b) of this section.

(d) In any case in which an employer or employment agency fails to comply with an order of a court issued in a civil action brought under this Act, the Division may commence proceedings to compel compliance with such order.

(e) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in the North Carolina Rules of Appellate Procedure for actions decided in and orders entered by superior courts in this State.

(f) In any action or proceeding under this Article, the court, in its discretion, may allow the prevailing party, other than the Division and the Agency for Civil Rights, a reasonable attorneys' fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for other costs the same as a private person except that where an investigation or preliminary investigation by the Division prior to the filing of the action resulted in a finding of reasonable cause, the court shall be precluded from finding that the action filed was frivolous, unreasonable, or without foundation.

"**§ 169-3-10. Pattern and practice referrals.**

Whenever the Director of the Division of Fair Employment has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this Article, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Director shall refer the matter to the Equal Employment Opportunity Commission for investigation as a pattern and practice case.

"**§ 169-3-11. Investigations, inspections, records.**

(a) In connection with any investigation of a charge filed under this Article, the Division of Fair Employment Practices or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy

any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this Article and is relevant to the charge under investigation.

(b) Every employer and employment agency subject to this Article shall:

(1) Make and keep records relevant to the determinations of whether unlawful employment practices have been or are being committed;

(2) Preserve the records and reports for those periods; and

(3) Make such reports therefrom as the Division of Fair Employment Practices may prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this Article or rules adopted pursuant to this Article.

The Division of Fair Employment Practices shall adopt rules to require each employer and employment agency subject to this Article that controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this Article, including, a list of applicants who wish to participate in the program (including the chronological order in which applications were received) and to furnish to the Division of Fair Employment Practices, upon request, a detailed description of the manner in which individuals are selected to participate in the apprenticeship or other training program. Any employer or employment agency which believes that the application to it of any rule or order issued under this subsection would result in undue hardship may apply to the Division of Fair Employment Practices for an exemption from the application of the rule or order, and, if the application for an exemption is denied, bring a civil action in the State superior court for the district where the records are kept. If the Division or the court, as appropriate, finds that the application of the regulation or order to the employer or employment agency in question would impose an undue hardship, the Division or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the State superior court for the district in which such person is found, resides, or transacts business, shall, upon application of the Director of the Division of Fair Employment, have jurisdiction to issue to such person an order requiring him to comply.

(c) In prescribing requirements pursuant to this section, the Director of the DFEP shall consult with other interested State and federal agencies and shall endeavor to coordinate DFEP's requirements with those adopted by those agencies.

(d) It shall be unlawful for any officer or employee of the Division of Fair Employment Practices and the Agency to make public in any manner whatever any information obtained by the Division pursuant to its authority under this section prior to the institution of any proceeding under this Article involving such information. Any officer or employee of the Agency who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor or shall be subject to the assessment of civil penalties of not more than one thousand dollars ($1,000).

"§ 169-3-12. Posting of notices; penalties.

(a) Every employer and employment agency shall post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice to be prepared or approved by the Division of Fair Employment setting forth excerpts from, or summaries of, the pertinent provisions of this Article, the State Fair Employment Act, and information pertinent to the filing of a complaint.

(b) Any person who willfully violates this section shall be subject to civil penalties of not more than one hundred dollars ($100.00) for each separate violation.

"Part 4. Definitions.

"**§ 169-3-13. Definitions.**

The following definitions apply in this Article:

(1) Because of sex or on the basis of sex. – Includes because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this Article shall be interpreted to permit otherwise.

(2) Commerce. – Trade, traffic, commerce, transportation, transmission, or communication within this State or between this State and any place outside the State.

(3) Employee. – An individual employed by an employer. The term "employee" does not include (i) any person elected to public office in this State, or a political subdivision of the State, by the qualified voters; (ii) any person chosen by an elected State or local officer to be on the officer's personal staff or an appointee chosen by the officer to serve on the policy-making level; (iii) an immediate adviser to a State officer with respect to the exercise of the constitutional or legal powers of that public office; (iv) persons employed by the State or any of its political subdivisions who are expressly excluded from the coverage of the State Personnel Act, Chapter 126 of the General Statutes; (v) federal employees; or (vi) persons employed by labor organizations.

(4) Employer. – A person engaged in an industry affecting commerce in this State who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of such a person. The term "employer" does not include (i) the United States or a corporation wholly owned by the government of the United States, (ii) an Indian tribe, or (iii) a bona fide private membership club which is exempt from taxation under Section 501(c) of Title 26 of the Internal Revenue Code of 1954.

(5) Employment agency. – Any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent for the person.

(6) Industry affecting commerce. – As defined in 42 U.S.C. § 2000e(h).
(7) Labor organization or labor union. – An organization, agent, agency, committee, group, association, or plan of any kind meeting the definitions set forth in 42 U.S.C. § 2000e(d) and (e) of Title VII of the Civil Rights Act of 1964, as amended.
(8) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, bankruptcy trustee, or receiver, or any other legal or commercial entity, except that the definition shall not mean a governmental entity or labor union unless that entity is specifically included by reference for coverage under this Chapter.
(9) Religion. – Includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that the employer is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
(10) Respondent. – An employer or employment agency named in an action brought under this Article.

"Article 4.
"State Fair Housing Act.
"Article 5.
"State Public Accommodations Act.

"**§ 169-5-1. Title.**

This Article shall be known and may be cited as the State Public Accommodations Act.

"**§ 169-5-2. No discrimination in public accommodations; civil actions.**

(a) All individuals in this State have the right to obtain the full and equal use of public accommodations, and advantages of any place of public accommodation, without discrimination because of an individual's or group's actual or perceived race, color, national origin, religion, sex, physical or mental disability, is hereby established as a statutory civil right to use of public accommodations.

(b) Any person whose exercise or enjoyment of the right described in subsection (a) of this section has been violated may bring a civil action. The court may restrain and enjoin future acts of illegal discrimination as to public accommodations and may award compensatory and punitive damages to the plaintiff. The court may also award court costs and attorneys' fees to the prevailing party; except that a prevailing defendant may be awarded reasonable attorneys' fees only after a finding that the case is frivolous, unreasonable, or without foundation.

(b) The Director of the Division of Fair Housing and Public Accommodations shall develop rules and procedures for the acceptance and investigation of charges of violation of rights with regard to public accommodations and public services as a prerequisite to the filing of an action by the Division when a determination is made that it is more reasonable than not to believe that discrimination has occurred as alleged.

(c) The DFHPA, pursuant to procedures approved by the Commissioner of the Agency, may file a civil action on behalf of and with the consent of any person subjected to a violation of a right described in subsection (a) of this section. In these actions the court may restrain and enjoin future acts of illegal discrimination as to public accommodations and may award compensatory and punitive damages to the injured person. The filing of an action by the Division following an investigation and finding of reasonable cause precludes a finding by a court that a case is frivolous, unreasonable, or without foundation.

"**§ 169-5-3. Persons with disabilities acts not affected.**

Nothing contained in this Article shall be construed to reduce or eliminate any rights or preferences conferred with respect to use and accommodation for use of public accommodations and public services by persons with disabilities as provided in Chapters 168 and 168A of the General Statutes.

"**§ 169-5-4. State Fair Housing Act not affected.**

Nothing contained in this Article shall be construed to alter the coverage or exemptions provided under the State Fair Housing Act as provided in Article 4 of this Chapter.

"**§ 169-5-5. Definitions.**

The following definitions apply in this Article:

(1) Facility. – All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

(2) Place of public accommodation. – A facility, operated by a private entity, whose operations affect commerce, including, but not limited to, any place, facility, or other retail establishment, restaurant, hotel or motel, theater, retail store, shopping mall, pharmacy, doctor's office, hospital, museum, library, park, amusement park, office building, or health spa which supplies goods or services, facilities, privileges on the premises to the public or which solicits or accepts the patronage, commerce, or trade of any person. The term does not include:

a. Entities controlled by religious organizations including churches, synagogues, and mosques.

b. Private clubs, as defined in Title 11 of the Civil Rights Act of 1964, except to the extent that the facilities of a private club are made available to customers as a place of public accommodation.

(3) Private entity. – A person or entity other than a public entity.

(4) Public accommodation. –The term covers the private sector and does not include services offered by public entities, or facilities operated by public entities, including but not limited to public schools, prisons and jails, and public mental health facilities.

(5) Public entity. – The State or any local government; and any department, agency, special purpose district, or other instrumentality of the State or any local government.

"Article 6.

"Interference With Civil Rights.

"Article 7.

"Hate Crime Investigations.

"**§ 169-7-1. Hate crimes; rights; investigations.**

(a) All individuals in this State have the right to live and visit in this State without fear of victimization from the commission, attempted commission, or threat of commission of a hate crime or hate-motivated action.

(b) The Agency, through its Division of Community Relations and Hate Crimes shall undertake fact-finding and background investigations of alleged violations of hate crimes laws in order to protect the rights of individuals, as provided by subsection (a) of this section, to be free from victimization in hate crimes and to ensure the prompt, timely, and adequate examination of claims of alleged hate crimes or any other crime where race, color, age, sex, religion, mental or physical disability, or national origin was a factor in the selection of the victim.

"**§ 169-7-2. Cooperation with law enforcement; temporary assignment of investigators and attorneys.**

(a) The Agency shall work cooperatively with all law enforcement agencies through its Division of Community Relations and Hate Crimes to encourage the reporting and investigation of covered violations and hate crimes. In every instance, the Division shall take all steps necessary to ensure that its involvement does not compromise criminal investigations or the rights of those accused of the commission of hate crimes.

(b) The Director of the DCRHC may refer any evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney for consideration of the institution of appropriate criminal proceedings under Chapter 14 of the General Statutes.

(c) For purposes of enforcing this Article, upon request of a district attorney following receipt of a Preliminary Report or reference from the Division, the DCRHC Director may, when practicable to do so, assign investigators of the Division to assist local law enforcement agencies in their investigations of alleged hate crimes. Such a special investigator shall have all the powers and duties prescribed by law for law enforcement agents regularly performing such duties for the district attorney.

(d) Upon receipt of a Preliminary Report or reference from the DCRHC, the district attorney may request that a duly employed attorney prosecute or assist in the prosecution of the hate crime violation or violations on behalf of the State. Upon approval of the Commissioner of the Agency when practicable to do so, the employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of the violations without receiving compensation from the district attorney. Such a special prosecutor shall have all the powers and duties prescribed by

law for district attorneys and such other powers and duties as are lawfully delegated to the special prosecutor by the district attorney in hate crime prosecutions.

"**§ 169-7-3. Preliminary reports.**

The findings and recommendations from all investigations, reviews, fact-finding, and background inquiries of alleged hate crime violations conducted by the Division of Community Relations and Hate Crimes will be set out in written form as Preliminary Reports. Such Preliminary Reports will minimally contain: summary of alleged violations, findings of fact, conclusions of law, initial determinations and recommendations for proceeding forward with further investigation by district attorney offices.

"**§ 169-7-4. Confidentiality.**

Except as required by law, no investigator, examiner, agent, or other representative of the Agency shall make public, in any manner, information gathered or received while conducting Preliminary Investigations under Articles 5 and 6 of this Chapter. The Preliminary Reports shall remain confidential and shall not be considered a public record so long as any related ongoing criminal investigation or prosecution is pending. The Director of the Division of Community Relations and Hate Crimes shall prescribe rules for the release of information and documents related to actions pursuant to this Article and shall have the discretion to seal or redact such portions of the reports as may reveal identities of minors, the salacious details of criminal acts, or as may otherwise be commonly held confidential by law enforcement agencies in this State pursuant to G.S. 132-1.4.

"**§ 169-7-5. Service of preliminary reports.**

The Commissioner shall serve a copy of the Agency's Preliminary Report upon the appropriate district attorney's office and upon the Office of the North Carolina Attorney General following each investigation authorized by this Article. The reports shall be served in the usual and customary manner for service of investigatory findings by the Agency.

"Article 8.

"Miscellaneous Provisions.

"**§ 169-8-1. State Personnel Act exemptions not affected.**

The provisions of this Chapter are not intended and shall not have the effect of amending the State Personnel Act, G.S. 126-5, and other sections, with respect to express exemptions of certain described categories of employees from coverage under the State Personnel Act.

"**§ 169-8-2. No effect on employee benefits.**

Except as provided in 42 U.S.C. § 2000e (k), nothing in this Chapter requires or precludes an employer from providing abortion benefits.

"**§ 169-8-3. Local deferral agencies not affected.**

(a) The provisions of this Chapter are not intended and shall not have the effect of interfering with, amending, or prohibiting contractual agreements between county and municipal government entities and nonprofits, through which those entities are:

(1) Designated as deferral agencies by the U.S. Equal Employment Opportunity Commission.

(2) Designated as deferral agencies by the U.S. Department of Housing and Urban Development.

"**§ 169-8-4. Criminal laws not affected.**

Unless as expressly stated, the provisions of this Chapter are not intended, and shall not be construed, to affect the criminal laws contained in Chapter 14 of the General Statutes.

"**§ 169-8-5. Grants.**

The Agency, through its Commissioner and constituent entities, may receive gifts and grants from public and private sources for use in accomplishing its responsibilities under this Chapter. The receipt, expenditure, and record keeping for any grants and gifts shall be in compliance with the State Budget Act and shall be accounted for as a part of the Commissioner's bi-annual report to the General Assembly.

"**§ 169-8-6. Civil penalties.**

The clear proceeds of civil penalties assessed pursuant to this Chapter shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 169-8-7. Severability.**

In the event any provision of this Chapter is held to be invalid, the court's holding as to that provision shall not affect the validity or operation of other provisions of the act, and to that end the provisions of this Chapter are severable."

SECTION 3.(a) Except as otherwise specifically provided in this act, each enumerated commission, board, office, or other subunit of State government transferred to Chapter 169 of the General Statutes as enacted by this act is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, that reference shall apply to the commission, board, office, or other subunit within the Agency for Civil Rights now exercising the functions of the former entity named in the document.

SECTION 3.(b) The Commissioner of the Agency shall report to the General Assembly at the start of the 2008 Regular Session, and periodically thereafter as deemed appropriate, on the status of the transition period established in Section 4 of this act and additional funds needed for position grade realignments, leases, and other expenditures found necessary for the accomplishment of the purposes of this act.

SECTION 3.(c) No action or proceeding pending at the time the North Carolina Omnibus Civil Rights Act takes effect brought by or against any State office, commission, council, or other governmental subunit whose functions, powers, and duties are transferred by this act to the North Carolina Agency for Civil Rights shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Commissioner of the North Carolina Agency for Civil Rights. In these actions and proceedings, the Commissioner shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the North Carolina Agency for Civil Rights, or by the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on

January 1, 2008, may be conducted and completed by the North Carolina Agency for Civil Rights in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners, or directors thereof.

SECTION 4.(a) A six-month transition period from July 1, 2007, through December 31, 2007, shall include staffing activities and administrative and programmatic planning. Nomination and confirmation of the Commissioner of the North Carolina Agency for Civil Rights shall occur as soon as practicable after July 1, 2007. The Commissioner may undertake necessary actions to ensure an orderly and efficient transfer of functions and personnel on or before January 1, 2008, including assembling a transition team and entering into leases on behalf of the Agency. The transition staff may include Deputy Commissioners, a General Counsel, Division Directors, administrative personnel, and other staff as appropriate. Office space may be obtained for the transition team. The Commissioner is further authorized to immediately begin the search for a location for the consolidated Agency for Civil Rights.

SECTION 4.(b) Sections 1(a), 1(b), and 1(c) of this act become effective July 1, 2007. The substantive provisions of Article 3, Article 5, and Article 7 of Chapter 169 of the General Statutes as enacted in Section 2 hereof, and Section 1(d) this act, become effective January 1, 2008. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 657
PROPOSED COMMITTEE SUBSTITUTE S657-CSRD-38 [v.3]

7/24/2007 6:00:28 PM

Short Title: Study Comm. on State Civil Rights Enforcement. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE LEGISLATIVE STUDY COMMISSION ON STATE CIVIL RIGHTS ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created the Legislative Study Commission on State Civil Rights Enforcement ("Commission"). The Commission shall consist of the Director of the Office of Administrative Hearings or the Director's designee and the Secretary of the Department of Administration or the Secretary's designee, both serving as ex-officio, nonvoting members, and 15 voting members, appointed as follows:

(1) Five members appointed by the Governor, to include:
   a. One person who represents an organization whose primary purpose is to work against discrimination in housing.
   b. Three representatives of organizations whose objectives include the elimination of discrimination on the basis of sex, race, ethnic origin, religion, physical or mental disability, or any other legally protected category.
   c. One person knowledgeable of State and federal labor law.

(2) Five members appointed by the President Pro Tempore of the Senate, to include:
   a. Three members of the Senate.
   b. One person who is an active State employee.
   c. One person from a private business or firm employing fewer than 200 employees in this State.

(3) Five members appointed by the Speaker of the House of Representatives, to include:
   a. Three members of the House of Representatives.
   b. One person who is a retired State employee.

c. One person from a private business or firm employing 200 or more employees in this State.

SECTION 1.(b) The Commission shall study the following issues relating to civil rights in this State:

(1) Current levels of funding provided to civil rights agencies.
(2) Mission statements of existing civil rights agencies.
(3) Current practices and structures of civil rights agencies in other states.
(4) Gaps in current service levels (such as the provision of public accommodations and the enforcement of hate crimes).
(5) Feasibility of creating a single State agency, division, or commission for civil rights investigations and enforcement.
(6) Analysis and recommendation of the appropriate level within State government to locate a civil rights agency.
(7) A recommended structure of a civil rights agency, including the appointment of a principal position.
(8) A recommended scope of application for a civil rights agency employment law function (i.e., apply only to public employment discrimination or to both public and private employment discrimination).
(9) Recommendation of whether or not a hate crimes unit should be established.
(10) Any other issue deemed relevant and necessary by the co-chairs of the Commission.

The Commission may conduct public hearings around the State to solicit firsthand testimony regarding civil rights enforcement issues in North Carolina.

SECTION 2. The President Pro Tempore of the Senate and Speaker of the House of Representatives shall each appoint a co-chair for the Commission. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and the Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1. The appointing authority shall fill vacancies.

The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

The State Personnel Commission, in conjunction with the Director of the Office of State Personnel, shall designate appropriate staff to serve as liaison to the Commission.

The Office of State Personnel shall complete an analysis of the issues identified for study in Section 1(b) of this act and submit that analysis, including any findings and recommendations, to the Commission by May 1, 2008, for the Commission's consideration.

SECTION 3. The Commission's interim and final reports shall include the results of the Commission's study as well as recommendations, legislative and otherwise. The Commission shall submit an interim report to the 2008 Regular Session of the 2007 General Assembly. The Commission shall make a final report to the 2009 General Assembly and shall terminate upon filing its final report.

SECTION 4. There is appropriated from the General Fund to the General Assembly the sum of twenty-five thousand dollars ($25,000) for the 2007-2008 fiscal year and the sum of twenty-five thousand dollars ($25,000) for the 2008-2009 fiscal year to fund the work of the Study Commission created in Section 1 of this act.

SECTION 5. This act becomes effective October 1, 2007.

SENATE BILL 657:
Study Comm. on State Civil Rights Enforcement

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 25, 2007
Introduced by:	Sen. Dannelly	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S657-CSRD		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 657 would establish the Legislative Study Commission on State Civil Rights Enforcement and would direct the Commission to study a range of specific issues relating to civil rights in the State. The Commission would submit interim and final reports to the General Assembly and would provide for an appropriation of $25,000 for both the 2007-2008 and 2008-2009 fiscal years to fund the work of the Commission.***

BILL ANALYSIS: The Proposed Committee Substitute to Senate Bill 657 would establish the Legislative Study Commission on State Civil Rights Enforcement.

Section 1(a) – Creates the Commission and designates the membership as follows:

- Two ex-officio, nonvoting members – the Director of the Office of Administrative Hearings or the Director's designee, and the Secretary of the Department of Administration or the Secretary's designee.
- Fifteen voting members – five appointed by the Governor, five appointed by the President Pro Tempore of the Senate, and five appointed by the Speaker of the House of Representatives. The bill specifies certain categories of persons to be represented on the Commission and includes both legislative and non-legislative members.

Section 1(b) – Directs the Commission to study a range of specific issues relating to civil rights in the State and authorizes the Commission to conduct public hearings around the State to solicit testimony regarding civil rights enforcement issues in the State.

Section 2 – Provides for appointment of Co-chairs, assignment of professional and clerical staff, authorization for the Commission to collect information and directs the Office of State Personnel to analyze the issues identified for study in Section 1(b) of the bill and submit their analysis and findings and recommendations to the Commission by May 1, 2008.

Section 3 – Directs the Commission to submit an interim report to the 2008 Regular Session of the 2007 General Assembly and a final report to the 2009 General Assembly. Section 3 also provides for termination of the Commission upon filing of its final report.

Section 4 – Appropriates $25,000 from the General Fund to the General Assembly for both the 2007-2008 and 2008-2009 fiscal years to fund the work of the Commission.

EFFECTIVE DATE: This act becomes effective October 1, 2007.

S0657e1-SMRD-CSRD

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Friday	July 27, 2007	9:30 - 11:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 316	Amend Civil Procedure Rule 45.	Representative Daughtry
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
HB 634	Renunciation Amendments.	Representative Ross
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1366	School Violence Prevention Act.	Representative Stiller Representative Justice Representative Glazier Representative Fisher

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Friday, July 27, 2007, 9:30 to 11:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 316	Amend Civil Procedure Rule 45.	Representative Daughtry
HB 573	Authorize Judge/Concealed Weapon in Court.	Representative Williams, III Representative Blue Representative Brubaker Representative Howard
HB 634	Renunciation Amendments.	Representative Ross
HB 1287	Report Denial of Some Pistol Permits.	Representative Jeffus Representative Harrison Representative Sutton
HB 1366	School Violence Prevention Act.	Representative Stiller Representative Justice Representative Glazier Representative Fisher

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE

Minutes

July 27, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on July 27, 2007, with twelve members present.

HB 573 (Authorize Judge/Concealed Weapon in Court.) Senator East agreed to withdraw his motion with regard to the Proposed Committee Substitute from the previous meeting. Senator East was then recognized to explain the bill in the absence of Representative Williams. Senator Jones presented an amendment and moved that it be accepted. Mr. Jim Blackburn, representing the North Carolina County Commissioners Association, spoke on the amendment as did Ms. Henri McClees, representing the Sporting Dogs Association. Senators Goodall, Apodaca and Berger also spoke on the amendment. Senator Hartsell called for a vote on the amendment, all voted and the amendment failed. Senator Berger presented an amendment and moved that it be adopted. All voted and the amendment failed. Senator Apodaca moved for a favorable report. All voted and the motion carried.

HB 316 (Amend Civil Procedure Rule 45.) Senator Hartsell noted that the bill was being recalled for technical purposes which had been taken care of with the Proposed Committee Substitute. Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 634 (Renunciation Amendments.) Senator East moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger chaired for Senator Hartsell to present the bill. Kory Goldsmith, Staff Attorney, gave additional explanation. Questions from Sentors Dorsett and Queen were answered by Ms. Goldsmith and Senator Hartsell. Senator Hartsell moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Friday, July 27, 2007

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

FAVORABLE

H.B. **573** Authorize Judge/Concealed Weapon in Court.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **38** Missing Persons Alert/Persons w/Dementia.
Draft Number: PCS 60402
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) **634** Renunciation Amendments.
Draft Number: PCS 10272
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Friday, July 27, 2007

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

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

S.B. **657** Omnibus Civil Rights Act.

Draft Number:	PCS 15133
Sequential Referral:	None
Recommended Referral:	Rules and Operations of the Senate
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Friday, July 27, 2007

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **316** Amend Civil Procedure Rule 45.

Draft Number:	PCS 80492
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 316

Committee Substitute Favorable 3/27/07

Senate Judiciary II (Criminal) Committee Substitute Adopted 7/25/07

Short Title: Amend Civil Procedure Rule 45. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 45 OF THE RULES OF CIVIL PROCEDURE TO ESTABLISH AN OBLIGATION TO PROVIDE NOTICE TO ALL PARTIES TO AN ACTION OF THE ISSUANCE OF A SUBPOENA AND THE RECEIPT OF MATERIAL PRODUCED IN COMPLIANCE WITH THE SUBPOENA, AND TO PROVIDE A REASONABLE OPPORTUNITY TO INSPECT SUCH MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 45, is amended by adding a new subsection to read:

"(d1) Opportunity for Inspection of Subpoenaed Matter. – A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with (i) the copy of the subpoena as required in subdivision (b)(2) of this section, and (ii) notice of receipt of the material produced in compliance with the subpoena. The party or attorney responsible for the issuance and service of the subpoena shall, upon request, provide all other parties a reasonable opportunity to copy and inspect such material at the expense of the inspecting party."

SECTION 2. This act becomes effective October 1, 2007, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 316

Committee Substitute Favorable 3/27/07

Senate Judiciary II (Criminal) Committee Substitute Adopted 7/25/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H316-CSRI-33 [v.2]

7/26/2007 7:17:20 PM

Short Title: Amend Civil Procedure Rule 45. (Public)

Sponsors:

Referred to:

February 22, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 45 OF THE RULES OF CIVIL PROCEDURE TO ESTABLISH AN OBLIGATION TO PROVIDE NOTICE TO ALL PARTIES TO AN ACTION OF RECEIPT OF MATERIAL PRODUCED IN COMPLIANCE WITH A SUBPOENA, AND TO PROVIDE A REASONABLE OPPORTUNITY TO INSPECT SUCH MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 45, is amended by adding a new subsection to read:

"(d1) Opportunity for Inspection of Subpoenaed Material. – A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with notice of receipt of the material produced in compliance with the subpoena and, upon request, shall provide all other parties a reasonable opportunity to copy and inspect such material at the expense of the inspecting party."

SECTION 2. This act becomes effective October 1, 2007, and applies to actions filed on or after that date.

HOUSE BILL 316:
Amend Civil Procedure Rule 45

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 26, 2007
Introduced by:	Rep. Daughtry	**Summary by:**	Jennifer McGinnis
Version:	PCS to Third Edition H316-CSRI-33 [v. 2]		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 316 would amend Rule 45 of the Rules of Civil Procedure to require that when a subpoena is served directing a person to produce designated records, the party or attorney issuing the subpoena must, within five business days of receipt of the material, provide notice to all other parties of receipt of the material produced. The party or attorney issuing the subpoena must also, upon request, provide all other parties reasonable opportunity to inspect and copy the material produced at the expense of the inspecting party.***

CURRENT LAW: Rule 45 of the Rules of Civil Procedure, as set out in Chapter 1A of the General Statutes, provides for the issuance of a subpoena directing a person to attend and give testimony in a matter or to produce and permit inspection of designated records that are in the person's custody or control. A subpoena may be served by the sheriff, a coroner, or any person at least 18 who is not a party to the action. A copy of the subpoena must be served upon each party to the action by delivering a copy to the party or by mailing it to the party at the party's last known address. Delivery of a copy includes handing it to the attorney or to the party, leaving it at the attorney's office with an employee, or sending a faxed copy with confirmation. A person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. Each of the following grounds may be sufficient for objecting to a subpoena:

a. The subpoena fails to allow reasonable time for compliance.
b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
c. The subpoena subjects a person to an undue burden.
d. The subpoena is otherwise unreasonable or oppressive.
e. The subpoena is procedurally defective.

BILL ANALYSIS: The PCS for House Bill 316 would require that when a subpoena is served directing a person to produce designated records, the party or attorney issuing the subpoena must, within five business days of receipt of the material, provide notice to all other parties of receipt of the material produced. The party or attorney issuing the subpoena must also, upon request, provide all other parties reasonable opportunity to inspect and copy the material produced at the expense of the inspecting party.

EFFECTIVE DATE: The bill would become effective October 1, 2007 and apply to actions filed on or after that date.

Brenda J. Carter, counsel to House Judiciary III, substantially contributed to this summary.

H0316e3-SMRI-CSRI-33 [v. 2]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 634*

Committee Substitute Favorable 4/10/07

Short Title: Renunciation Amendments. (Public)

Sponsors:

Referred to:

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"**§ 31B-1. Right to renounce succession.**

(a) A person who succeeds to a property interest as:

(1) ~~Heir, or~~Heir;

(2) Next of ~~kin, or~~kin;

(3) ~~Devisee, or~~Devisee;

(4) ~~Legatee, or~~Legatee;

(4a) Donee;

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or~~ insured;

(6) Person succeeding to a renounced ~~interest, or~~ interest;

(7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~ trust;

(8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or~~ instrument;

(9) Repealed by Session Laws 1989, c. 684, s. 2.

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

(9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity,

contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on ~~death,~~ death account, or other right to death benefits arising under ~~contract; or~~contract.

(9d) ~~The duly~~Duly authorized or appointed guardian with the prior or subsequent approval of the clerk of superior court, ~~or~~ or, if required, of the resident judge of the superior court, of any of the ~~above.~~ above; or

(9e) Fiduciary, including an attorney-in-fact of any of the above, and including a personal representative of any of the above appointed under Chapter 28A of the General Statutes, subject to G.S. 31B-1.1(a), (b), and (c);

~~(10) The personal representative appointed under Chapter 28A of any of the above,~~

~~or the attorney-in-fact of any of the above~~may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person renouncing unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. ~~Provided, however,~~ Notwithstanding the foregoing, there shall be no right of partial renunciation if ~~the decedent or donee of the power expressly so provided in~~ the instrument creating the ~~interest.~~interest expressly so provides.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, ~~(ii)~~ (iii) declare the renunciation and extent thereof, ~~(iii)~~ and (iv) be signed and acknowledged by the person ~~authorized to renounce.~~ renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce."

SECTION 2. G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as recodified by this section, reads as rewritten:

"§ 31B-1.1. ~~Right to renounce fiduciary powers.~~Renunciation by fiduciary.

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A~~ immunities; however, a fiduciary may not renounce the rights of beneficiaries unless the instrument creating the fiduciary relationship authorizes such a renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) ~~The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce.~~Except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity, including a trustee of a charitable trust, may renounce an interest in property as permitted by G.S. 31B-1.

(c) If a fiduciary renounces property or a power that otherwise would have become property held by the fiduciary pursuant to the instrument, the property or power shall not become property held by the fiduciary pursuant to the instrument. A renouncing trustee continues to hold legal title to the property or power if, by the terms of the trust instrument, the effect of the renunciation is to transfer equitable title to a beneficiary of the trust.

(d) If a fiduciary so elects, the fiduciary may institute a special proceeding by petition in the superior court for a determination as to whether a renunciation is or would be compatible with the fiduciary's duties as provided in this subsection:

(1) A petition filed under this subsection regarding a renunciation that includes any interest in real property may be filed in the office of the clerk of the superior court of any county in which all or any part of the real property is situated or any county in which venue would otherwise lie.

(2) Commencement, notice and service of summons shall be accomplished in accordance with Article 33 of Chapter 1 of the General Statutes.

(3) All holders of record legal title to the interest renounced or to be renounced as well as all beneficiaries under the instrument creating the fiduciary relationship in esse shall be parties to the proceeding, and where any of the beneficiaries are under legal disability, their duly appointed general guardians or their guardians ad litem shall be made parties. The clerk of the superior court shall appoint a guardian ad litem to represent the interests of any beneficiaries not in esse, and the guardian ad litem shall be a party to the proceeding. The trustee of a charitable trust filing a petition under this subsection shall provide a copy of the petition to the North Carolina Attorney General, and the

petition shall contain a specific statement that it is being provided to the Attorney General pursuant to this subdivision.

(4) The petition shall state the basis for the fiduciary's allegation that the renunciation is or would be compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries.

(5) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the clerk shall enter an order stating the clerk's determination as to whether the renunciation is or would be compatible with the fiduciary's duties.

(6) The effectiveness of a renunciation is not affected by a proceeding under this subsection."

SECTION 3. G.S. 31B-2 reads as rewritten:

"**§ 31B-2. Time and place of filing renunciation.**

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument ~~renouncing a present interest~~ of renunciation shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced interest to the ~~renouncer~~ person renouncing was complete for the purpose of such taxes.

(b) ~~An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes.~~When a renunciation is made within the time period required under subsection (a) of this section, the spouse of the person renouncing real property or an interest in real property is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.

(c) The renunciation ~~shall be~~ is effective when filed with the clerk of court ~~of~~ (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased ~~donee~~ creator of the power or holder of ~~the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or~~

~~mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.~~power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real property, or an interest therein, shall be registered in accordance with the provisions of G.S. 31B-2(d).

(d) If real property or an interest therein is renounced, ~~a copy of~~ the instrument of renunciation shall also be ~~filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated.~~ registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the ~~deceased owner~~ transferor or ~~donee~~ creator of the ~~power,~~power or holder of the power, and (ii) the name of the person renouncing. ~~The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced.~~ Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person renouncing and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

(e) If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person renouncing and persons to whom the property interest or power passes by reason of the renunciation."

SECTION 4. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-2.1. Delivery of instrument of renunciation by the person renouncing to other persons.**

(a) In this section:

(1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

a. An annuity or insurance policy;

b. An account with a designation for payment on death;

c. A security registered in beneficiary form;

d. A pension, profit-sharing, retirement, or other employment-related benefit plan;

e. An individual retirement account or retirement annuity; or
f. Any other nonprobate transfer at death.

(2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.

(b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

(c) If a fiduciary renounces an interest in property held pursuant to the instrument creating the fiduciary relationship, a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation.

(d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the personal representative of the decedent's estate; or
(2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.

(e) In the case of an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;
(2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or
(3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.

(f) In the case of an interest in an inter vivos trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;
(2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or
(3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.

(g) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.

(h) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.

(i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be

delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing.

(j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at any time after the power was created, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power;

(2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power or the personal representative of the holder's estate;

(2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

(1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsections (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's representative.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

SECTION 5. G.S. 31B-3 reads as rewritten:

"**§ 31B-3. Effect of renunciation.**

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

(1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves as if the ~~renouncer~~ person renouncing had predeceased the date the transfer of the renounced interest to the ~~renouncer~~ person renouncing was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest to the ~~renouncer~~ person renouncing was complete for the purpose of those ~~taxes.~~ taxes, and the spouse of the person renouncing has no elective share or other marital interest in the renounced property.

(2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the property or interest devolves as if the ~~renouncer~~ person renouncing had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.

(3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the ~~renouncer~~ person renouncing had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the ~~renouncer~~ person renouncing is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be governed by G.S. 31-42(a) notwithstanding that in fact the ~~renouncer~~ person renouncing has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the ~~renouncer~~ person renouncing had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncer~~ person

renouncing does not have such issue, then the property or interest shall be distributed as though the ~~renouncer~~ person renouncing had predeceased the decedent.

(d) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person renouncing holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation.

(e) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(f) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant."

SECTION 6. G.S. 31B-4 reads as rewritten:

"**§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce, or

(3) Repealed by Session Laws 1998-148, s. 4.

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) The renunciation or the written waiver of the right to renounce is binding upon the ~~renouncer~~ person renouncing or person waiving and all persons claiming through or under ~~him.~~ that person.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial

sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred."

SECTION 7. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-4.1. Tax qualified renunciation.**

If, as a result of a renunciation or transfer, the renounced or transferred property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person renouncing, then the renunciation or transfer is an effective renunciation, notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty."

SECTION 8. G.S. 31B-6 is repealed.

SECTION 9. This act becomes effective January 1, 2008, and applies to instruments executed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 573

Short Title:	Authorize Judge/Concealed Weapon in Court.	(Public)
Sponsors:	Representatives Williams, Blue, Howard, Brubaker (Primary Sponsors); Adams, Barnhart, Blackwood, Blust, Brown, Church, Cleveland, Coleman, Daughtridge, Dockham, England, Faison, Folwell, Frye, Glazier, Goforth, Goodwin, J. Harrell, Hill, Hilton, Jones, Justus, Killian, Kiser, McComas, McGee, McLawhorn, Neumann, Ray, Samuelson, Setzer, Spear, Steen, Sutton, Wainwright, Walker, R. Warren, Wiley, Wray, and Yongue.	
Referred to:	Judiciary II.	

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DISTRICT COURT JUDGE OR SUPERIOR COURT JUDGE WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3.

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3.

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 573
PROPOSED SENATE COMMITTEE SUBSTITUTE H573-CSRC-68 [v.1]

7/26/2007 6:50:17 PM

Short Title: Authorize Judge/Weapon in Court/AOC Changes. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DISTRICT COURT JUDGE OR SUPERIOR COURT JUDGE WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES, TO MAKE CHANGES TO THE STATE BUDGET ACT AS IT APPLIES TO THE JUDICIAL BRANCH, TO ADD A NEW DUTY TO THE DIRECTOR'S POWERS AND DUTIES, TO MODIFY OR REPEAL CERTAIN STATUTES RELATED TO DRUG TREATMENT COURTS, TO ESTABLISH A PILOT PROGRAM IN SEVERAL COUNTIES FOR ELECTRONIC COURT FILINGS, TO MAKE CLARIFYING CHANGES FOR CONTINUING TRAINING FOR MAGISTRATES; AND TO PROHIBIT MAGISTRATES FROM THE PRIVATE PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3.

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3.

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge the judge's official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 2. G.S. 143C-1-1(b) reads as rewritten:

"(b) The provisions of this Chapter shall apply to every State ~~agency~~ agency, unless specifically exempted herein, and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch."

SECTION 3. G.S. 143C-3-2 reads as rewritten:

"**§ 143C-3-2. Budget estimate for the judicial branch.**

The Administrative Officer of the Courts shall give the Director an estimate of the financial needs of the judicial branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the judiciary shall be approved and certified by the Chief Justice. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include these estimates for the judicial branch in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget ~~submitted~~ the Director submits to the General Assembly."

SECTION 4. G.S. 143C-3-5(a) reads as rewritten:

"(a) Budget Proposals. – The Governor shall present budget ~~recommendations~~ recommendations, consistent with G.S. 143C-3-1, 143C-3-2, and 143C-3-3 to each regular session of the General Assembly at a mutually agreeable time to be fixed by joint resolution."

SECTION 5. G.S. 143C-4-6(b) reads as rewritten:

"(b) Increase in Size Limitation. – To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) operation of the courts or ~~(iii)~~(iv) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget

provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment."

SECTION 6. G.S. 143C-6-2(b) reads as rewritten:

"(b) Revenue Collections. – The Director, with the assistance of the Secretary of Revenue and other officials collecting or receiving appropriated State revenue, shall continuously survey the revenue collections. If the Director finds that revenues to any fund, when added to the beginning unreserved fund balance in that fund, will be insufficient to support appropriations from that fund, the Director shall immediately notify the General Assembly that a deficit is anticipated. The Director shall consult with the Chief Justice to identify expenditure reductions and other lawful measures the Chief Justice and Judicial Branch can implement to reduce expenditures. The Director shall report in a timely manner to the General Assembly a plan containing the expenditure reductions and other lawful measures as the Director is implementing in order to avert the deficit. The Director's plan shall include expenditure reductions and other lawful measures identified by the Chief Justice and Judicial Branch as methods to reduce expenditures. The Director may recommend changes to the expenditure reductions and other lawful measures identified by the Chief Justice and Judicial Branch as methods to reduce expenditures in the plan the Director submits to the General Assembly"

SECTION 7. G.S.143C-6-4 is amended by adding a new subsection to read:

"(i) Transfers in programs, objects, and line items in the Judicial Branch Budget. – The Chief Justice of the Supreme Court may approve transfers and expenditures for more than was authorized in the enacted budget for programs, objects, or line items in the budget of the judicial branch and shall report transfers quarterly, beginning October 31, to the Joint Legislative Commission on Governmental Operations on transfers approved by the Chief Justice."

SECTION 8. G.S. 143C-6-6(c) reads as rewritten:

"(c) This section does not apply to The University of North ~~Carolina.~~Carolina or the judicial branch."

SECTION 9. G.S. 143C-7-1(a) reads as rewritten:

"(a) Report to Director. – A State ~~agency~~ agency, other than the judicial branch, that submits to the federal government or to any other party an application for funds that will be subject to this Chapter shall first provide to the Director a copy of the application along with any related information the Director may require. The judicial branch shall provide the Director with a copy of the application and any related information after making the application."

SECTION 10. G.S. 143C-10-3(a) reads as rewritten:

"(a) State ~~Officer~~ Officers or ~~Employee.~~Employee of the Executive Branch. – The Governor may suspend from the performance of his or her duties any State officer or ~~employee,~~employee of the executive branch except an officer elected by the people, who persists, after notice and warning, in failing or refusing to comply with the provisions of this Chapter or any lawful administrative directive issued pursuant to this Chapter. Before acting to suspend, the Governor shall give the accused notice and an

opportunity to be heard in his or her own defense. The Governor shall report the facts leading to suspension to the Attorney General who may initiate appropriate criminal or civil proceedings. The Governor may apply to the General Court of Justice for a restraining order and injunction if a suspended officer or employee persists in performing official acts."

SECTION 11. G.S. 7A-343 reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and ~~his~~ the director's duties include all of the following:

(1) Collect and compile statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the ~~courts;~~courts.

(2) Determine the state of the dockets and evaluate the practices and procedures of the courts, and make recommendations concerning the number of judges, district attorneys, and magistrates required for the efficient administration of ~~justice;~~ justice.

(3) Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior ~~court;~~court.

(4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department, and authorize expenditures from funds appropriated for these ~~purposes;~~purposes.

(5) Investigate, make recommendations concerning, and assist in the securing of adequate physical accommodations for the General Court of ~~Justice;~~Justice.

(6) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and supplies as are to be acquired with State funds for the General Court of ~~Justice;~~Justice.

(7) Make recommendations for the improvement of the operations of the Judicial ~~Department;~~Department.

(8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General ~~Assembly;~~Assembly.

(9) Assist the Chief Justice in performing his duties relating to the transfer of district court judges for temporary or specialized ~~duty;~~duty.

(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~~G.S. 7A-343.2.

(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;~~service.

(9c) 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;~~so.

(9d) Analyze the use of contractual positions in the Judicial Department and, after consultation with the Joint Legislative Commission on Governmental Operations, convert contractual positions to permanent State positions when the Director determines it is in the best interests of the Judicial Department to do so.

(10) Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice."

SECTION 12. G.S. 7A-794 reads as rewritten:

"**§ 7A-794. Fund administration.**

The Drug Treatment Court Program Fund is created in the Administrative Office of the Courts and is administered by the Director of the Administrative Office of the Courts in consultation with the State Drug Treatment Court Advisory Committee. ~~The Director of the Administrative Office of the Courts shall award grants from this Fund and implement local drug treatment court programs. Grants shall be awarded based upon the general guidelines set forth by the Director of the Administrative Office of the Courts and the State Drug Treatment Court Advisory Committee.~~"

SECTION 13. G.S. 7A-798 is repealed.

SECTION 14 G.S. 7A-801 reads as rewritten:

"**§ 7A-801. ~~Plan for evaluation.~~Monitoring and annual report.**

The Administrative Office of the Courts shall ~~develop a statewide model and conduct ongoing evaluations of~~ monitor all State-recognized and funded local drug treatment ~~court programs. A report of these evaluations shall be submitted~~ courts, prepare an annual report on the implementation, operation, and effectiveness of the statewide drug treatment court program, and submit the report to the General Assembly by March 1 of each year. Each local drug treatment court program shall submit evaluation reports to the Administrative Office of the Courts as requested."

SECTION 15.(a). The Administrative Office of the Courts may conduct a pilot project in multiple counties to evaluate a system for the electronic filing, case processing and case management of civil cases and special proceedings filed in the General Court of Justice. The Administrative Office of the Courts may designate the case types which will be subject to mandatory electronic filing, case processing and case management during the pilot project. No county may be selected without the concurrence of the senior resident superior court judge, the chief district court judge, and the clerk of superior court. Notwithstanding the requirements of Chapters 1A and

Chapter 7A of the General Statutes, the Supreme Court and the Administrative Office of the Courts shall establish rules, regulations, costs, procedures and specifications for electronic filing, case processing and case management under the pilot. Provided, however, Rule 4 of the Rules of Civil Procedure shall govern service of process of pleadings that are currently required to be served pursuant to Rule 4 of the Rules of Civil Procedure.

SECTION 15.(b). Subsection (a) of this section expires June 30, 2009.

SECTION 16. G.S. 7A-49.5(c) reads as rewritten:

"(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.~~courts."

SECTION 17. G.S. G.S. 7A-177(b) reads as rewritten:

"(b) ~~Training~~ In addition to the basic training course required in subsection (a) of this section, continuing education courses shall be provided at such times and locations as necessary to assure that they are conveniently available to all magistrates without extensive travel to other parts of the State. ~~Courses shall be provided in Asheville for the magistrates from the western region of the State.~~"

SECTION 18. G.S. 7A-312 reads as rewritten:

"**§ 7A-312. Uniform fees for jurors; meals.**

(a) A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars ($12.00) for the first day of service and twenty dollars ($20.00) per day afterwards, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive forty dollars ($40.00) per day for each day of service in excess of five days. A grand juror shall receive twenty dollars ($20.00) per day. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees.

(b) Notwithstanding subsection (a) of this section, the 26th Judicial District may operate a pilot program in which a juror may waive payment of the per diem fees provided for in that subsection. A juror waiving the fee may designate that the fee be used for any of following services, if such services are provided in the district: (i) client treatment and service programs associated with a drug treatment or DWI treatment court program; (ii) courthouse self-help centers; (iii) courthouse child care centers; (iv) legal aid programs operated by a nonprofit corporation operating within the district; and (v) the Crime Victims Compensation Fund. If no such services are provided within the district, then waived fees are transferred to the Crime Victims Compensation Fund."

SECTION 19. G.S. 7A-314(f) reads as rewritten:

"(f) In 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, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable

from funds appropriated to the Administrative Office of the Courts. The court in order to facilitate the disposition of criminal or Chapter 50B cases during a session of court, may authorize the use of the court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases where an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c)."

SECTION 20. G.S. 7A-321 reads as rewritten:

"**§ 7A-321. Collection of offender fines and fees assessed by the court.**

(a) 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.

(b) In attempting to collect the fines, fees, and costs owed by offenders not sentenced to supervised probation, the Department may:

(1) Assess a collection assistance fee if an amount due remains unpaid for 30 days after the time period allotted by the court. The amount of the collection assistance fee shall not exceed the average cost of collecting the debt or twenty percent (20%) of the amount past due, whichever is less.

(2) Enter into contracts with a collection agency or agencies to collect unpaid fines, fees, and costs owed by offenders not sentenced to supervised probation.

(3) Intercept tax refund checks under Chapter 105A of the General Statutes, the Setoff Debt Collection Act.

(c) Should the Judicial Department use either of the methods listed in subdivisions (b)(1) and (2) above to collect fines, fees, and costs owed by offenders not sentenced to supervised probation, the department may not charge any additional cost of collection pursuant to G.S. 115C-437."

SECTION 21. G.S. 84-2 reads as rewritten:

"**§ 84-2. Persons disqualified.**

No justice, judge, magistrate, full-time district attorney, full-time assistant district attorney, public defender, assistant public defender, clerk, deputy or assistant clerk of the General Court of Justice, register of deeds, deputy or assistant register of deeds, sheriff or deputy sheriff shall engage in the private practice of law. Persons violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two hundred dollars ($200.00)."

SECTION 22. Section 1 of this act becomes effective December 1, 2007, and applies to offenses committed on or after that date. The remainder of the act is effective when it becomes law.

Statement re. HB 573, Authorize Judge/Concealed Weapon in Court:
NC Is Not the Only State to Prohibit Judges from Carrying Guns in Their Courtrooms
General Brief Statement Against HB 573

Lisa Price, Executive Director, North Carolinians Against Gun Violence
July 26, 2007

In yesterday's meeting of the Senate J II Committee meeting, Henri McClees, lobbyist for the NC Firearms Dealers Group and NC Sporting Dog Association, made a shocking statement: North Carolina is the only state that does not allow judges to carry concealed handguns in their courtrooms. Where did she get this information? We had never heard this before, either from supporters or opponents of HB 573.

We learned from the Brady Center to Prevent Gun Violence and the Legal Community Against Violence that South Carolina, Tennessee, and Illinois forbid carrying guns in public buildings, including courthouses. While there are some exceptions, such as for law enforcement, *judges are not excepted.*

The statement by the lobbyist favoring HB 573 is not correct; NC is not the only state to prohibit judges from carrying concealed guns in their courtrooms.

Vote Against HB 573:
This *unnecessary* bill attempts to solve a problem that has not been proven to exist. There are not reports of judges being shot at in their courtrooms.

The bill is supposed to protect judges but actually puts the public, and judges especially, at risk. There could be shootouts in court and judges might be targeted because a criminal would assume that the judge is armed.

Court law enforcement officers, not judges, are trained how to handle volatile situations.

If there is a problem in protecting people in courthouses, law enforcement protection could be increased by adding more bailiffs, more metal detectors, better training, added security measures, etc.

If this bill passes, other courthouse personnel, such as district attorneys and magistrates, might seek the same authority.

Who will come next to carry guns: teachers, principals, & others in government buildings?

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 573

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

H573-ARC-67 [v.3]

Date July 27 ,2007

Comm. Sub. [YES]
Amends Title [YES]
H573-CSRC-68[v.1]

Senator Jones

moves to amend the bill on page 1, by deleting lines 2-3 and substituting the following:

"AN ACT TO AUTHORIZE COUNTIES TO ADOPT ORDINANCES THAT WOULD ALLOW A DISTRICT COURT JUDGE OR SUPERIOR COURT JUDGE WHO HAS A CONCEALED HANDGUN PERMIT TO";

and on page 1, line 16, by adding the following at the beginning of the line:

"(a)";

and on page 1, line 24, by adding the following at the beginning of the lines:

"(b)";

on page 2, by deleting lines 4-9, and substituting the following:

"(4b) Any district court judge or superior court judge who is authorized to carry or possess a concealed handgun in a building housing a court of the General Court of Justice pursuant to an ordinance adopted pursuant to subsection (c) of this section."; and

on page 2, lines 11-12, by inserting the following between the lines:

"(c) Notwithstanding G.S. 14-409.40, any county may adopt an ordinance authorizing district court judges and superior court judges to carry or possess a

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 573

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

H573-ARC-67 [v.3]

concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24. The ordinance may grant this authority in some or all of the buildings housing courts within the county, but if the authority granted applies in fewer than all of the buildings housing courts within the county, the ordinance shall specifically identify each building to which the authority applies.";

on page 2, line 12, by adding the following at the beginning of the line:

"(d)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 573

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

H573-ARC-69 [v.1]

Date July 27, ,2007

Comm. Sub. [YES]
Amends Title [YES]
H573-CSRC-68[v.1]

Senator Berger of Franklin

moves to amend the bill on page 1, line 2, by deleting the word "JUDGE" and substituting "JUDGE, MAGISTRATE,";

and on page 2. line 4, by deleting the phrase "judge or" and substituting "judge, magistrate, or";

and on page 2, line 6, by inserting the phrase "or magistrate" after the word " judge";

and on page 2, line 7, by inserting the phrase "or magistrate's" after the word "judge's";

and on page 2, line 7, by inserting the phrase "or magistrate" after the word "judge".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 634*

Committee Substitute Favorable 4/10/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H634-CSRC-71 [v.1]

7/26/2007 8:19:42 PM

Short Title: Renunciation Amendments. (Public)

Sponsors:

Referred to:

March 14, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT TO MAKE ADVANCE DIRECTIVES AND TO DESIGNATE HEALTH CARE AGENTS; AND TO IMPROVE AND SIMPLIFY THE MEANS OF MAKING THESE DIRECTIVES AND DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32A-15(c) reads as rewritten:

"(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. No conflict between these Chapters exists when either a health care power of attorney or a declaration provides that the declaration is subject to decisions of a health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of ~~life-sustaining procedures when the principal is in the present condition, these procedures~~ life-prolonging measures when the principal is in such condition, the measures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending ~~physician. In this case, G.S. 90-322 does not apply.~~physician, as G.S. 90-322 shall not apply in such case. Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying."

SECTION 2. G.S. 32A-16 reads as rewritten:

"**§ 32A-16. Definitions.**

~~As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:~~The following definitions apply in this Article:

(1) ~~"Disposition of remains" means the~~ Disposition of remains. – The decision to bury or cremate human ~~remains as~~ remains, as human remains are defined in G.S. ~~90-210.121(17).~~90-210.121, and, subject to G.S. 32A-19(b), arrangements relating to burial or cremation.

(1a) ~~"Health care" means any~~ Health care. – Any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort ~~including, life-sustaining procedures.~~including life-prolonging measures. "Health care" includes mental health treatment as defined in subdivision (8) of this section.

(2) ~~"Health care agent" means the~~ Health care agent. – The person appointed as a health care attorney-in-fact.

(3) ~~"Health care power of attorney" means a~~ Health care power of attorney. – A written ~~instrument,~~instrument that substantially meets the requirements of this Article, that is signed in the presence of two qualified witnesses, and acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the ~~principal, and which substantially meets the requirements of this Article.~~principal. The notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician or mental health treatment provider, a paid employee of a health facility in which the principal is a patient, or a paid employee of a nursing home or any adult care home in which the principal resides.

(4) ~~"Life-sustaining procedures" are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.~~Life-prolonging measures. – Medical procedures or interventions which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function, including mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment. Life-prolonging measures do not include care necessary to provide comfort or to alleviate pain.

(5) ~~"Principal" means the~~ Principal. – The person making the health care power of attorney.

(6) ~~"Qualified witness" means a~~ Qualified witness. – A witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he or she (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable

expectation that he or she would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor ~~an~~ a licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, nor ~~an~~ a paid employee of a health facility in which the principal is a patient, nor ~~an~~ a paid employee of a nursing home or any ~~group care~~ adult care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.

(7) ~~"Advance instruction for mental health treatment" or "advance instruction" means a written instrument as defined in G.S. 122C-72(1) pursuant to which the principal makes a declaration of instructions, information, and preferences regarding mental health treatment.~~Advance instruction for mental health treatment or advance instruction. – As defined in G.S. 122C-72(1).

(8) ~~"Mental health treatment" means the~~ Mental health treatment. – The process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" ~~includes, but is not limited to,~~ includes electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness."

SECTION 3. G.S. 32A-19(a), (a1), and (b) read as rewritten:

"**§ 32A-19. Extent of authority; limitations of authority.**

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had ~~understanding and~~ capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing ~~life-sustaining procedures~~ life-prolonging measures and the power to authorize the giving or withholding of mental health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(a1) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack ~~sufficient understanding or~~ capacity to make or communicate health care decisions. A health care agent is not subject to

criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of ~~remains.~~remains; provided this authority is limited to incurring reasonable costs related to exercising these powers, and a health care power of attorney does not give the health care agent general authority over a principal's property or financial affairs."

SECTION 4. G.S. 32A-22(a) reads as rewritten:

"(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian may petition the court, after giving notice to the health care agent, to suspend the authority of the health care agent during the guardianship. The court may suspend the authority of the health care agent for good cause shown, provided that the court's order must direct whether the guardian shall act consistently with the health care power of attorney or whether and in what respect the guardian may deviate from it. Any order suspending the authority of the health care agent must set forth the court's findings of fact and conclusions of law.~~the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian.~~ The guardian shall act consistently with G.S. 35A-1201(a)(5). A health care provider shall be fully protected from liability in relying on a health care power of attorney until given actual notice of the court's order suspending the authority of the health care agent."

SECTION 5.(a) G.S. 32A-24(c) reads as rewritten:

"**§ 32A-24. Reliance on health care power of attorney; defense.**

"(c) The withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense."

SECTION 5.(b) G.S. 32A-24 is amended by adding the following new subsection to read:

"(d) The protections of this section extend to any valid health care power of attorney, including a document valid under G.S. 32A-27; these protections are not limited to health care powers of attorney prepared in accordance with the statutory form provided in G.S. 32A-25.1, or to health care powers of attorney filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet applicable statutory requirements for a health care power of attorney. These protections also extend to a document executed in another jurisdiction that is valid as a health care power of attorney under G.S. 32A-27. A health care

provider shall have no liability for acting in accordance with a revoked health care power of attorney unless that provider has actual notice of the revocation."

SECTION 6.(a) G.S. 32A-25 is repealed.

SECTION 6.(b) Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

*This document gives the person you designate as your health care agent **broad powers** to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the

instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent(s) to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ *(Physician)*

2. _____ *(Physician)*

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section 6 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

_____ shall NOT have the authority to withhold artificial nutrition
(Initial) (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____ shall NOT have the authority to withhold artificial hydration
(Initial) (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

_____ B. Limitations Concerning Health Care Decisions. In exercising
(Initial) the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ C. Limitations Concerning Mental Health Decisions. In
(Initial) exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____ *(Initial)* donate any needed organs or parts; or

_____ *(Initial)* donate only the following organs or parts:

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____ donate my body for anatomical study if needed.

(Initial)

_____

(Initial)

In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any adult care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date: _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 7. Article 3 of Chapter 32A of the General Statutes is amended by adding the following new section to read:

"**§ 32A-27. Health care powers of attorney executed in other jurisdictions.**

Notwithstanding G.S. 32A-16(3), a health care power of attorney or similar document executed in a jurisdiction other than North Carolina shall be valid as a health care power of attorney in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or of this State."

SECTION 8. Article 4 of Chapter 35A of the General Statutes is amended by adding the following new section to read:

"**§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321."

SECTION 9. G.S. 35A-1241(a)(3) reads as rewritten:

"(3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or ~~service.~~service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 10. G.S. 90-320 reads as rewritten:

"**§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or ~~his~~ the patient's representative has the fundamental right to control the decisions relating to the rendering of ~~his~~ the patient's own medical care, including the decision to have ~~extraordinary means~~ life-prolonging measures withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or ~~his~~ the patient's representative may exercise these rights. A military advanced medical directive executed in accordance with 10 U.S.C. § 1044 or other applicable law is valid in this State."

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of ~~life-sustaining procedures~~ life-prolonging measures in any lawful manner. In such respect the provisions of this Article are cumulative."

SECTION 11.(a) G.S. 90-321(a), (b), and (c) read as rewritten:

"(a) ~~As used in this Article the term:~~The following definitions apply in this Article:

(1) ~~"Declarant" means a~~ Declarant. – A person who has signed a declaration in accordance with subsection ~~(c);~~ (c) of this section.

(1a) Declaration. – Any signed, witnessed, dated, and proved document meeting the requirements of subsection (c) of this section.

~~(2) "Extraordinary means" is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;~~

(2a) Life-prolonging measures. – As defined in G.S. 32A-16(4).

(3) ~~"Physician" means any~~ Physician. – Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North ~~Carolina;~~Carolina.

~~(4) "Persistent vegetative state" is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time.~~

(b) If a person has ~~declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means or by artificial nutrition or hydration,~~ expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection ~~(e);~~(e) of this section; and

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's directives, and

~~a. Terminal and incurable; or~~

~~b. Repealed by Session Laws 1993, c. 553, s. 28;~~

~~c. Diagnosed as a persistent vegetative state; and~~

(2) There is confirmation of the declarant's present condition as set out ~~above~~ in subdivision (b)(1) of this section by a physician other than the attending physician;

then ~~extraordinary means or artificial nutrition or hydration, as specified by the declarant,~~ the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, ~~may~~ be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) The attending physician ~~may rely upon a signed, witnessed, dated and proved declaration, or a copy of that declaration obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes;~~ shall follow, subject to subsections (b), (e), and (k) of this section, a declaration:

(1) ~~Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and~~That expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life if, as specified in the declaration as to any or all of the following:

a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of time; or

b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain consciousness; or

c. The declarant suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible.

(2) ~~Which~~ That states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the ~~extraordinary means or artificial nutrition or hydration;~~ life-prolonging measures; and

(3) ~~Which~~ That has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon ~~his~~ the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) ~~are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group care home in which the declarant resides,~~are not the attending physician, licensed health care providers who are paid employees of the attending physician, paid employees of a health facility in which the declarant is a patient, or paid employees of a nursing home or any adult care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the declaration; and

(4) ~~Which~~ That has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out

in subsection ~~(d) below.~~(d1) of this section. A notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any adult care home in which the declarant resides."

SECTION 11.(b) G.S. 90-321(d) is repealed.

SECTION 11.(c) G.S. 90-321 is amended by adding the following new subsection to read:

"(d1) The following form is specifically determined to meet the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

GENERAL INSTRUCTIONS: You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and/or a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

1. When My Directives Apply

My directions about prolonging my life shall apply ***IF*** my attending physician determines that I lack capacity to make or communicate health care decisions and:

NOTE: YOU MAY INITIAL ANY AND ALL OF THESE CHOICES.

_____ *(Initial)* I have an incurable or irreversible condition that will result in my death within a relatively short period of time.

_____ *(Initial)* I become unconscious and my health care providers determine that, to a high degree of medical certainty, I will never regain my consciousness.

_____ *(Initial)* I suffer from advanced dementia or any other condition which results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

2. These are My Directives about Prolonging My Life:

In those situations I have initialed in Section 1, I direct that my health care providers:

NOTE: INITIAL ONLY IN ONE PLACE.

_____ *(Initial)* may withhold or withdraw life-prolonging measures.

_____ *(Initial)* shall withhold or withdraw life-prolonging measures.

3. Exceptions – "Artificial Nutrition or Hydration"

NOTE: INITIAL ONLY IF YOU WANT TO MAKE EXCEPTIONS TO YOUR INSTRUCTIONS IN PARAGRAPH 2.

EVEN THOUGH I do not want my life prolonged in those situations I have initialed in Section 1:

_____ *(Initial)* I *DO* want to receive BOTH artificial hydration AND artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THIS BLOCK IF ONE OF THE BLOCKS BELOW IS INITIALED.

_____ *(Initial)* I *DO* want to receive ONLY artificial hydration (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL THE BLOCK ABOVE OR BELOW IF THIS BLOCK IS INITIALED.

_____ *(Initial)* I *DO* want to receive ONLY artificial nutrition (for example, through tubes) in those situations.

NOTE: DO NOT INITIAL EITHER OF THE TWO BLOCKS ABOVE IF THIS BLOCK IS INITIALED.

4. I Wish to be Made as Comfortable as Possible

I direct that my health care providers take reasonable steps to keep me as clean, comfortable, and free of pain as possible so that my dignity is maintained, even though this care may hasten my death.

5. I Understand my Advance Directive

I am aware and understand that this document directs certain life-prolonging measures to be withheld or discontinued in accordance with my advance instructions.

6. If I have an Available Health Care Agent

If I have appointed a health care agent by executing a health care power of attorney or similar instrument, and that health care agent is acting and available and gives instructions that differ from this Advance Directive, then I direct that:

_____ *(Initial)* Follow Advance Directive: This Advance Directive will **override** instructions my health care agent gives about prolonging my life.

_____ *(Initial)* Follow Health Care Agent: My health care agent has authority to **override** this Advance Directive.

NOTE: **DO NOT INITIAL BOTH BLOCKS.** ***IF YOU DO NOT INITIAL EITHER BOX, THEN YOUR HEALTH CARE PROVIDERS WILL FOLLOW THIS ADVANCE DIRECTIVE AND IGNORE THE INSTRUCTIONS OF YOUR HEALTH CARE AGENT ABOUT PROLONGING YOUR LIFE.***

7. My Health Care Providers May Rely on this Directive

My health care providers shall not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, or the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they shall be entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

9. I have the Right to Revoke this Advance Directive

I understand that at any time I may revoke this Advance Directive in a writing I sign or by communicating in any clear and consistent manner my intent to revoke it to my attending physician. I understand that if I revoke this instrument I should try to destroy all copies of it.

This the _____ day of _____, _____.

_____

Print Name _____

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood or marriage, and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant or as an heir under the Intestate Succession Act, if the declarant died on this date without a will. I also state that I am not the declarant's attending physician, nor a licensed health care provider who is (1) an employee of the declarant's attending physician, (2) nor an employee of the health facility in which the declarant is a patient, or (3) an employee of a nursing home or any

adult care home where the declarant resides. I further state that I do not have any claim against the declarant or the estate of the declarant.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of declarant)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____"

SECTION 11.(d) G.S. 90-321(e), (h), and (i) read as rewritten:

"(e) ~~The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.~~A declaration may be revoked by the declarant, in writing or in any manner by which the declarant is able to communicate the declarant's intent to revoke in a clear and consistent manner, without regard to the declarant's mental or physical condition. A health care provider shall have no liability for acting in accordance with a revoked declaration unless the provider has actual notice of the revocation. A health care agent may not revoke a declaration unless the health care power of attorney explicitly authorizes that revocation; however, a health care agent may exercise any authority explicitly given to the health care agent in a declaration. A guardian of the person of the declarant or general guardian may not revoke a declaration.

(h) The withholding or discontinuance of ~~extraordinary means and/or the withholding or discontinuance of either artificial nutrition or hydration, or both~~ life-prolonging measures in accordance with this section shall not be considered the

cause of death for any civil or criminal purposes nor shall it be considered unprofessional ~~conduct.~~conduct or a lack of professional competence. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense. The protections of this section extend to any valid declaration, including a document valid under subsection (l) of this section; these protections are not limited to declarations prepared in accordance with the statutory form provided in subsection (d1) of this section, or to declarations filed with the Advance Health Care Directive Registry maintained by the Secretary of State. A health care provider may rely in good faith on an oral or written statement by legal counsel that a document appears to meet the statutory requirements for a declaration.

(i) ~~Any certificate in the form provided by this section prior to July 1, 1979, shall continue to be valid.~~ Use of the statutory form prescribed in subsection (d1) of this section is an optional and nonexclusive method for creating a declaration and does not affect the use of other forms of a declaration, including previous statutory forms."

SECTION 11.(e) G.S. 90-321 is amended by adding the following new subsections to read:

"(k) Notwithstanding subsection (c) of this section:

(1) An attending physician may decline to honor a declaration that expresses a desire of the declarant that life-prolonging measures not be used if doing so would violate that physician's conscience or the conscience-based policy of the facility at which the declarant is being treated; provided, an attending physician who declines to honor a declaration on these grounds must not interfere, and must cooperate reasonably, with efforts to substitute an attending physician whose conscience would not be violated by honoring the declaration, or transfer the declarant to a facility that does not have policies in force that prohibit honoring the declaration.

(2) An attending physician may decline to honor a declaration if after reasonable inquiry there are reasonable grounds to question the genuineness or validity of a declaration. The subsection imposes no duty on the attending physician to verify a declaration's genuineness or validity.

(l) Notwithstanding subsection (c) of this section, a declaration or similar document executed in a jurisdiction other than North Carolina shall be valid in this State if it appears to have been executed in accordance with the applicable requirements of that jurisdiction or this State."

SECTION 12. G.S. 90-322 reads as rewritten:

"**§ 90-322. Procedures for natural death in the absence of a declaration.**

(a) ~~If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state or is mentally incapacitated, and:~~ If the attending physician determines, to a high degree of medical certainty, that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity, and:

~~(1) It is determined by the attending physician that the person's present condition is:~~
~~a. Terminal and incurable; or~~
~~b. Repealed by Session Laws 1993, c. 553, s. 29.~~
~~c. Diagnosed as a persistent vegetative state; and~~
(1a) That the person:
a. Has an incurable or irreversible condition that will result in the person's death within a relatively short period of time; or
b. Is unconscious and, to a high degree of medical certainty, will never regain consciousness; and
(2) There is confirmation of the person's present condition as set out above in this subsection, in writing by a physician other than the attending physician; and
(3) A vital bodily function of the person could be restored ~~by extraordinary means or a vital function of the person is being sustained by extraordinary means; or~~ or is being sustained by life-prolonging measures;
~~(4) The life of the person could be or is being sustained by artificial nutrition or hydration;~~

then, ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued in accordance with subsection ~~(b).~~(b) of this section.

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. ~~90-321~~90-321, ~~the extraordinary means or artificial nutrition or hydration~~ then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence ~~(i) of a health care agent appointed pursuant to a health care power of attorney meeting the requirements of Article 3 of Chapter 32A of the General Statutes, or (ii) of a guardian of the person, or (iii) of the person's spouse, or (iv) of a majority of the relatives of the first degree, in that order.~~of the following persons, in the order indicated:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);
(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;
(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of

Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age;

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is reasonably available then at the discretion of the attending physician the ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

(c) Repealed by Session Laws 1979, c. 715, s. 2.

(d) The withholding or discontinuance of such ~~extraordinary means or artificial nutrition or hydration~~ life-prolonging measures shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

SECTION 13. G.S. 90-21.13 reads as rewritten:

"**§ 90-21.13. Informed consent to health care treatment or procedure.**

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or ~~the patient's spouse, parent, guardian, nearest relative or~~ other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact. A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) ~~A valid consent is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.~~ The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age;

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

(c1) If none of the persons listed under subsection (c) of this section is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is confirmation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of ~~G.S. 35A-1245~~G.S. 35A-1245, 90-21.17, and 90-322, ~~and~~ Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C of the General Statutes, the provisions of those sections and Articles shall control and continue in full force and effect."

SECTION 14. G.S. 90-21.17 reads as rewritten:

"**§ 90-21.17. Portable do not resuscitate ~~order.~~order and Medical Order for Scope of Treatment.**

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") ~~order.~~order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

(1) With the consent of the patient;

(2) If the patient is a minor, with the consent of the patient's parent or guardian; or

(3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file".

(c) The Department of Health and Human Services shall develop a portable DNR order ~~form.~~form and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; an advisory that a patient is not required to have a MOST; the name, telephone number, and signature of the physician, physician assistant, or nurse practitioner authorizing the order; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e., the patient or the

patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; patient or patient representative's name, contact information, and signature; effective date of the form and review dates; a prominent advisory that directions in a MOST form may suspend, while those MOST directions are in effect, any conflicting directions in a patient's previously executed declaration of an advance directive for a natural death ("living will"), health care power of attorney, or other legally authorized instrument; and an advisory that the MOST may be revoked by the patient or the patient's representative. The official MOST form shall also include the following statement written in boldface type directly above the signature line: **'You are not required to sign this form to receive treatment.'** The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of ~~extraordinary care~~ life-prolonging measures pursuant to ~~G.S. 90-322 or an individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.~~G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation or other life-prolonging measures from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR ~~order.~~order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR ~~order.~~order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR ~~order,~~order or MOST not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section."

SECTION 15.(a) G.S. 122C-3(20) reads as rewritten:

"(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority

by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of ~~attorney as prescribed in Article 3 of Chapter 32 of the General Statutes.~~attorney."

SECTION 15.(b) G.S. 122C-57(d) reads as rewritten:

"(d) Each voluntarily admitted ~~client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney~~ client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or~~ client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment."

SECTION 16. G.S. 130A-468(c) and (d) read as rewritten:

"(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, or a request to remove that document from the registry without its revocation, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document ~~into~~ into, or removal of a document from, the registry database does not do any of the following:

(1) Affect the validity of the document in whole or in part.

(2) Relate to the accuracy of information contained in the document.

(3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met."

SECTION 17. G.S. 28A-13-1 reads as rewritten:

"**§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his or her appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. ~~Prior to appointment,~~ However, a person named executor in a will ~~may~~ may, prior to appointment, carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral and burial ~~arrangements.~~arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have

precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative."

SECTION 18. The Legislative Research Commission shall study the issue of whether North Carolina law should be amended to allow a person to require life-prolonging measures. The LRC shall involve all stakeholders in the study. The LRC shall report its recommendations to the 2008 Session of the 2007 General Assembly.

SECTION 19. The North Carolina Institute of Medicine (Institute) shall study issues related to the provision of end-of-life medical care in North Carolina. As part of the study, the Division of Health Service Regulation, Department of Health and Human Services, and the North Carolina Board of Medicine shall provide to the Institute nonidentifying information regarding claims and complaints related to end-of-life medical treatment by health care providers that was contrary to the express wishes of either the patient or a person authorized by law to make treatment decisions on behalf of the patient. The Institute may review any other data related to end-of-life medical care and treatment the Institute determines is relevant.

The purpose of this study is to determine whether statutory changes related to advance directives and health care powers of attorney impact the type and quantity of end-of-life medical care provided to patients, whether the patient's or patient representative's express wishes regarding the provision of treatment at the end of life are being honored, and whether there is any change in the number of persons who request continued treatment at the end of their lives, but do not receive that treatment.

The Institute shall report its findings to the following entities no later than January 30, 2013:

(1) The 2013 General Assembly.
(2) The North Carolina Bar Association.
(3) The North Carolina Medical Society.

SECTION 20. This act is effective October 1, 2007.

HOUSE BILL 634:
Advance Directives/Health Care Pwr. Atty

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 27, 2007
Introduced by:	Rep. Ross	**Summary by:**	Kory Goldsmith Committee Counsel
Version:	PCS to Second Edition H634-CSRC-69		

SUMMARY: ***The Proposed Committee Substitute to House Bill 634 completely rewrites the original bill and inserts the contents of Senate Bill 1046 as it crossed from the Senate to the House. In its current form, H634 amends laws related to Health Care Powers of Attorney, Advance Directives/Living Wills, and Guardianship statutes to allow individuals to make clear choices about their medical treatment, especially end of life treatments.***

CURRENT LAW: Article 23 of Chapter 90 authorizes "Living Wills" and was enacted in 1979. Article 3 of Chapter 32A authorizes health care powers of attorney and was enacted in 1991. Part 2 of Article 3 of Chapter 122C authorizes an instruction for mental health treatment and was enacted in 1997. There are also scattered statutes related to the authority of health care agents, especially in the event there is also a court appointed guardian. In general, when a person has executed both a Health Care Power of Attorney and a Living Will, the terms of the Living Will control over the health care agent designation.[1] A similar situation exists when there is a health care agent, and a court appoints a guardian.

BILL ANALYSIS:

Section 1 amends G.S. 32A-15(c) to provide that either a living will or a health care power of attorney (HCPOA) may provide that the health care power of attorney takes precedence over a living will, and that provision will not create a conflict between the two documents. *Under current law, it is not clear whether this situation does create a conflict. However, because current law gives a living will precedence over a HCPOA in the event of a conflict, it could be argued that the living will always "trumps" the HCPOA.*

This section also makes it clear that if a living will does not speak directly to a medical condition and the HCPOA does, the HCPOA controls. It notes that the law does not authorize any action or omission to end life other than to permit the natural process of dying.

Section 2 amends the definitions related to HCPOAs. It also specifies that the notary may be an employee of the attending physician or employed by the health care facility where the principal is being treated.

Also changes the terminology from "life-sustaining procedures" to "life-prolonging measures". These are medical procedures or interventions which, in the judgment of the attending physician, serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function.

Section 3 replaces terminology, but also makes it clear that if a health care agent has the authority to make decisions regarding the disposition of the principal's remains, those decisions are limited to incurring reasonable costs and does not give the health care agent broader authority over the principal's estate or financial affairs.

[1] G.S. 32A-15(c).

Section 4 creates a procedure by which a guardian of the principal may petition a court to suspend the authority of a health care agent during the term of the guardianship. The court may suspend the agent's authority for good cause shown, but must specify whether the guardian must act consistently with the HCPOA. Also creates immunity for a health care provider who relies upon a HCPOA until the provider receives actual notice of the court's order suspending the HCPOA.

Section 5(a) changes the terminology to be consistent with new definitions. **Section 5(b)** adds a new subsection to G.S. 32A-24 to clarify that a health care provider may rely upon the authority of a health care agent contained in a HCPOA, whether the HCPOA is executed in another jurisdiction, executed under the previous statutory form, or does not use the statutory form but does comply with applicable laws. The health care provider may rely upon the HCPOA until receiving actual notice of its revocation.

Section 6(a) repeals the current statutory HCPOA. **Section 6(b)** creates a new HCPOA statutory form, G.S. 32A-25.1(a). The form attempts to clarify the consequences of certain choices by the principal and also points out that certain provisions purporting to create limitations will not be effective unless the principal specifies the limitations. Also provides that use of the statutory form is optional, and is a nonexclusive method for creating a HCPOA. Subsection (b) of new G.S. 32A-25.1 provides that the new statutory form does not affect the use of previously executed HCPOAs.

Section 7 creates G.S. 32A-27 which provides that a HCPOA executed in another jurisdiction shall be valid in North Carolina if it appears it was executed in compliance with the law of the other state or the laws of North Carolina.

Section 8 allows a guardian of the person or legal guardian to petition the Clerk of Court to suspend the authority of a health care agent. It also specifies that the guardian does not have the authority to revoke a Living Will.

Section 9 clarifies that a health care agent has the right to make health care decisions for a ward for whom a legal guardian or guardian of the person has been appointed unless the Clerk has suspended that authority.

Section 10 revises terminology. Also makes it clear that military advance directives are recognized under North Carolina law.

Section 11(a) amends G.S. 90-321 regarding Advance Directives or Living Wills. It defines a "Declaration" as any signed, witnessed, dated and notarized document that otherwise meets the requirements of the Article. The witnesses must not have any interest in the declarant's estate or be an employee of the health care provider. It repeals the definition of "extraordinary means" and substitutes "life-prolonging measures" as that term is defined in the HCPOA statutes. It also repeals the term "persistent vegetative state."

It amends G.S. 90-321(b) and (c) to allow an attending physician to withhold life-prolonging measures if the declarant has properly executed a living will, and the attending physician determines that the declarant:

- has an incurable or irreversible condition that will result in the declarant's death in a relatively short period of time;
- is unconscious and, to a high degree of medical certainty, will never regain consciousness; or
- suffers from advanced dementia or any other condition resulting in the substantial loss of cognitive ability and, to a high degree of medical certainty, is not reversible.

AND

- The declarant's condition is confirmed by another physician, if one is reasonably available.

AND

- The Living Will states that the declarant understands that the document authorizes the attending physician to withhold life-prolonging measures.

Current law allows an attending physician to withhold artificial nutrition or hydration pursuant to a Living Will if: the declarant is terminally ill or diagnosed as being in a persistent vegetative state and these medical conditions are confirmed by a second medical opinion. The Declaration must be in writing, signed by the declarant and two witnesses, and notarized.

Section 11(b) repeals the current statutory form for Living Wills

Section 11(c) creates a new statutory form for Living Wills that reflects the statutory changes.

Sections 11(d) and (e) clarify that a Declaration may be revoked orally or in writing without regard to a declarant's mental or physical condition. *Current law makes a revocation effective only upon communication of the revocation to the attending physician by the declarant or an individual acting on behalf of the declarant.* It provides immunity to a health care provider who acts in accordance with a revoked declaration unless the health care provider has actual knowledge of the revocation. Also extends the protections to a Declaration that is executed in another jurisdiction, and one that does not conform to the statutory form. It also prohibits a health care agent from revoking a declaration unless the HCPOA explicitly grants the agent this authority.

Section 11(e) creates a new subdivision (k) for G.S. 90-321 to allow a physician to decline to honor a Declaration if doing so would violate the physician's conscience or the conscience-based policy of the facility where the declarant is being treated. It also allows a physician to decline to honor a Declaration if after reasonable inquiry, there are reasonable grounds to question the genuineness or validity of the document.

Section 12 amends G.S. 90-322 regarding situations where life-prolonging measures may be withheld in the absence of a Declaration. If the attending physician determines that:

- To a high degree of medical certainty, the person lacks capacity to make or communicate health care decisions and the person will never regain that capacity AND
- a patient has an incurable or irreversible condition that will lead to that person's death in a relatively short period of time, OR
- the patient is unconscious and unlikely to regain consciousness.

AND

- That condition is confirmed by another physician.

AND

- A bodily function could be restored or is being sustained by life-prolonging measures,

THEN

The life-prolonging measures may be withheld or discontinued at the direction and under the supervision of the attending physician with the concurrence of the following individuals, in descending order:

- A health care agent appointed under a valid HCPOA, unless that authority has been suspended by a court in favor of a court appointed guardian of the person or general guardian, in which case the court appointed guardian takes priority.
- An attorney-in-fact with powers to make health care decisions for the principal.
- The patient's spouse.
- A majority of the patient's reasonably available parents and children who are at least 18 years of age.
- A majority of the patient's reasonably available siblings who are at least 18 years of age.
- An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.
- If none of these are reasonably available, the attending physician may withhold or discontinue life-prolonging measures.

Current law gives priority decision-making to the following in descending order: a health care agent, then a guardian of the person, then the person's spouse, then a majority of the relatives of the first degree.

Section 13 amends G.S. 90-21.13 regarding informed consent to medical treatment under the medical malpractice provisions of the statutes. It sets out, in descending order, the persons who may give valid consent to medical treatment if the patient is comatose or otherwise lacks the capacity to make or communicate health care decisions. The same individuals are listed in the same order as those in Section 12 regarding the withholding or discontinuance of life-prolonging measures.

Current law provides that the patient's spouse, parent, guardian, or nearest relative may give the consent. It does not prioritize among those individuals.

Section 14 amends G.S. 90-21.17 regarding do not resuscitate orders (DNRs). It adds to the statutes Medical Order for Scope of Treatment (MOST). A MOST could be issued by a physician pursuant to the same consents necessary for a DNR. However, if the consent is given by the patient's representative, the representative must sign the MOST. The statute would also specify the information that must be contained on a MOST form.

Section 15(a), (b) and (c) amend provisions in Chapter 122C regarding advance instruction for mental health treatment to make those provisions conform to other changes already discussed.

Section 16 amends G.S. 130A-468 regarding the Advance Directive Registry maintained by the Secretary of State to provide that removal of a document from the registry database does not affect the validity of the document, relate to the accuracy of the information contained in the document, or create a presumption of validity regarding the document or the information contained in the document.

Section 17 amends G.S. 28A-13-1 to provide that if a HCPOA grants a health care agent the authority to make decisions related to the disposition of the principal's body, that authority takes priority over the authority of a personal representative regarding the same.

Section 18 directs the Legislative Research Commission (LRC) to study the issue of whether North Carolina should amend its laws to allow for a person to require that medical care be provided. The LRC would be required to report to the 2008 Session of the 2007 General Assembly.

Section 19 directs the North Carolina Institute of Medicine to study issues related to providing end-of-life medical care in North Carolina. The purpose is to determine whether the statutory changes to advance directives and health care powers of attorney impact the type and quality of care, whether the patient or the patient's or the patient representative's wishes are being honored, and whether there is any change to the number of persons who request continued treatment at the end of their lives. The Institute must report its findings no later than January 20, 2013 to the 2013 General Assembly, the North Carolina Bar Association, and the North Carolina Medical Society.

EFFECTIVE DATE: The act is effective October 1, 2007.

Brad Krehely contributed substantially to the drafting of this summary.

H0634e2-SMRC-CSRC-69

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 31, 2007

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **1366** School Violence Prevention Act.

Draft Number:	PCS 60408
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE JUDICIARY II COMMITTEE

Minutes

July 31, 2007

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on the night of July 31, 2007, around his desk in the Senate Chamber at 8:30 PM with thirteen members present.

HB 1366 (School Violence Prevention Act.) Senator Dorsett moved to adopt the Proposed Committee Substitute for purposes of discussion. Senator Dalton was recognized to explain the bill. Representative Glazier gave additional explanation and answered questions from committee members. Mr. John Rustin, representing the Family Policy Council, spoke in support of the bill. Senator Queen moved for a favorable report, unfavorable to the original bill. The motion was seconded by Senator Atwater. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 5

HOUSE BILL 1366
Committee Substitute Favorable 5/17/07
Committee Substitute #2 Favorable 5/22/07
Senate Judiciary II (Criminal) Committee Substitute Adopted 7/31/07
Corrected Copy 8/1/07

Short Title: School Violence Prevention Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SCHOOL VIOLENCE PREVENTION ACT.

Whereas, the General Assembly of North Carolina finds that a safe and civil environment in school is necessary in order for students to learn and achieve high academic standards; and

Whereas, bullying and harassment, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment; and

Whereas, bullying and harassing behaviors create a climate that fosters violence in our schools; and

Whereas, it is essential to enact a law that seeks to protect the health and welfare of North Carolina students and improve the learning environment for North Carolina students; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 29B.

"School Violence Prevention.

"**§ 115C-407.5. Bullying and harassing behavior.**

(a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

(1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or

(2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

(b) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.

(c) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person with reliable information about an act of bullying or harassing behavior.

(d) A school employee, student, or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.

"**§ 115C-407.6. Policy against bullying or harassing behavior.**

(a) Before December 31, 2007, each local school administrative unit shall adopt a policy prohibiting bullying or harassing behavior.

(b) The policy shall contain, at a minimum, the following components:

(1) A statement prohibiting bullying or harassing behavior.

(2) A definition of bullying or harassing behavior no less inclusive than that set forth in this Article.

(3) A description of the type of behavior expected from each student and school employee.

(4) Consequences and appropriate remedial action for a person who commits an act of bullying or harassment.

(5) A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously. This shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

(6) A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation.

(7) A statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation.

(8) A statement of how the policy is to be disseminated and publicized, including notice that the policy applies to participation in school-sponsored functions.

(c) Notice of the local policy shall appear in any school unit publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school unit and in any student and school employee handbook.

(d) Information regarding the local policy against bullying or harassing behavior shall be incorporated into a school's employee training program.

(e) To the extent funds are appropriated for these purposes, a local school administrative unit shall:

(1) Provide training on the local policy to school employees and volunteers who have significant contact with students; and

(2) Develop a process for discussing the policy with students.

"**§ 115C-407.7. Prevention of school violence.**

Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior.

"**§ 115C-407.8. Construction of this Article.**

(a) This Article shall not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

(b) This Article shall not be interpreted to prevent a victim of bullying or harassing behavior from seeking redress under any other available law, either civil or criminal.

(c) Nothing in this Article shall be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying or harassing behavior.

(d) The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision.

(e) The provisions of this Article shall be liberally construed to give effect to its purposes.

(f) Nothing in this act shall be construed to create any classification or preference beyond those existing in present statute or case law."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2007-2008 school year.

SENATE

GENERAL ASSEMBLY OF NORTH CAROLINA COMMITTEE SUBSTITUTE

SESSION 2007

JUL 3 1 2007

H D

HOUSE BILL 1366

ADOPTED

Committee Substitute Favorable 5/17/07

Committee Substitute #2 Favorable 5/22/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1366-PCS60408-RD-45

Short Title: School Violence Prevention Act. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SCHOOL VIOLENCE PREVENTION ACT.

Whereas, the General Assembly of North Carolina finds that a safe and civil environment in school is necessary in order for students to learn and achieve high academic standards; and

Whereas, bullying and harassment, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment; and

Whereas, bullying and harassing behaviors create a climate that fosters violence in our schools; and

Whereas, it is essential to enact a law that seeks to protect the health and welfare of North Carolina students and improve the learning environment for North Carolina students; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 29B.

"School Violence Prevention.

"**§ 115C-407.5. Bullying and harassing behavior.**

(a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

(1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or

(2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

(b) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.

(c) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person with reliable information about an act of bullying or harassing behavior.

(d) A school employee, student, or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.

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(b) The policy shall contain, at a minimum, the following components:

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(2) A definition of bullying or harassing behavior no less inclusive than that set forth in this Article.

(3) A description of the type of behavior expected from each student and school employee.

(4) Consequences and appropriate remedial action for a person who commits an act of bullying or harassment.

(5) A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously. This shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

(6) A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation.

(7) A statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation.

(8) A statement of how the policy is to be disseminated and publicized, including notice that the policy applies to participation in school-sponsored functions.

(c) Notice of the local policy shall appear in any school unit publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school unit and in any student and school employee handbook.

(d) Information regarding the local policy against bullying or harassing behavior shall be incorporated into a school's employee training program.

(e) To the extent funds are appropriated for these purposes, a local school administrative unit shall:

(1) Provide training on the local policy to school employees and volunteers who have significant contact with students; and

(2) Develop a process for discussing the policy with students.

"**§ 115C-407.7. Prevention of school violence.**

Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior.

"**§ 115C-407.8. Construction of this Article.**

(a) This Article shall not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

(b) This Article shall not be interpreted to prevent a victim of bullying or harassing behavior from seeking redress under any other available law, either civil or criminal.

(c) Nothing in this Article shall be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying or harassing behavior.

(d) The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision.

(e) The provisions of this Article shall be liberally construed to give effect to its purposes.

(f) Nothing in this act shall be construed to create any classification or preference beyond those existing in present statute or case law."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2007-2008 school year.

MEMBERSHIP

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2007-2008 Biennium

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Room 629, LOB
715-3030

Research Staff:

Ben Popkin
Jennifer McGinnis
Trina Griffin
Jeffrey Hudson

2007-2008 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0038	Parmon	SILVER ALERT SYSTEM/ MISSING PERSONS ALERT.	*SR	Ch. SL 2007-469	04-16-07	07-27-07
H0183=	Rapp	BAN CELL PHONE USE BY SCHOOL BUS DRIVERS.	*SR	Ch. SL 2007-261	05-21-07	07-03-07
H0189	Allen	PYROTECHNICS PERMITS BY CITIES	*SR	Ch. SL 2007-38	04-02-07	04-26-07
H0280=	Walend	TRANSYLVANIA TAX COLLECTOR APPOINTIVE.	S	Ref To Com On Judiciary II (Criminal)	04-17-07	
H0316	Daughtry	AMEND CIVIL PROCEDURE RULE 45.	*SR	Ch. SL 2007-514	04-02-07	07-25-07
H0316	Daughtry	AMEND CIVIL PROCEDURE RULE 45.	*SR	Ch. SL 2007-514	07-26-07	07-27-07
H0341	Glazier	PROPORTIONALITY REVIEW.	*S	Ref To Com On Judiciary II (Criminal)	05-29-07	
H0441	Sutton	FELONY/STEAL OR CUT ANOTHER'S TIMBER.	*S	Ref To Com On Judiciary II (Criminal)	04-04-07	
H0445	Dickson	ACCESS TO INFORMATION FOR ADULT ADOPTEES.	*SR	Ch. SL 2007-262	05-16-07	07-10-07
H0535	Wainwright	CRIMINAL BACKGROUND REVIEWS- EMS PERSONNEL.	*SR	Ch. SL 2007-411	04-25-07	07-03-07
H0535	Wainwright	CRIMINAL BACKGROUND REVIEWS- EMS PERSONNEL.	*SR	Ch. SL 2007-411	07-09-07	07-10-07
H0545=	Ross	CLARIFY AND AMEND VARIOUS PROVISIONS.	*S	Pres. To Gov. 7/ 14/2008	03-26-07	06-25-08
H0550=	Love	MODIFY SCHOOL EMPLOYEE CONFIDENTIALITY LAW.	*SR	Ch. SL 2007-192	05-21-07	06-25-07
H0554	Insko	ASSAULT DISABLED PERSON/INSTITUTIONAL SETTING-AB	*SR	Ch. SL 2007-188	05-23-07	06-26-07
H0563	Sutton	TRAFFIC & PERSONAL SAFETY CHANGES/ PROTESTS.	*SR	Ch. SL 2007-360	05-09-07	07-16-07
H0573	Williams	AUTHORIZE JUDGE/ CONCEALED WEAPON IN COURT.	SR	Ch. SL 2007-412	04-23-07	07-27-07
H0634=	Ross	ADVANCE DIRECTIVES/ HEALTH CARE POA.	*SR	Ch. SL 2007-502	04-16-07	07-27-07
H0730=	Goforth	MEDIATION OF PROPERTY INSURANCE CLAIMS.-AB	SR	Ch. SL 2007-300	04-02-07	07-16-07
H0765=	Ross	TEST. ADDITIONS TO TRUSTS/WILL REFERENCES.	*SR	Ch. SL 2007-184	04-11-07	06-12-07
H0767=	Sutton	ATV USE FOR EMERGENCIES.-AB	*SR	Ch. SL 2007-433	04-30-07	07-23-07
H0775=	Ross	REVISE SIMULTANEOUS DEATH ACT.	SR	Ch. SL 2007-132	04-16-07	06-12-07
H0865	Goodwin	REMOVE BARRIERS TO INTERSTATE ADOPTION.	*SR	Ch. SL 2007-151	04-17-07	06-19-07
H0866	Goodwin	EXPAND REACH OF COURTS/TERM. PARENTAL	*SR	Ch. SL 2007-152	04-17-07	06-19-07

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		RIGHTS.				
H0904	Thomas	DUPLICATE DRIVERS LICENSE REQUIREMENTS.	*S	Re-ref Com On Rules and Operations of the Senate	05-16-07	07-16-07
H0943	Lewis	UPDATING OF JURY LIST.	*SR	Ch. SL 2007-512	04-25-07	07-25-07
H0946	Grady	VANDALISM DAMAGES MORE THAN $5,000/ FELONY.	*SR	Ch. SL 2008-15	05-15-07	06-04-08
H0947	Blue	NC FORECLOSURE/ LANDLORD TENANT LAWS.	*SR	Ch. SL 2007-353	05-22-07	07-25-07
H0995	McElraft	INCREASE PENALTY/ STARVATION OF ANIMALS.	*SR	Ch. SL 2007-211	05-21-07	06-26-07
H1003=	Johnson	PROBATION VIOLATION CHANGES.	*S	Pres. To Gov. 7/9/ 2008	05-16-07	06-04-08
H1003=	Johnson	PROBATION VIOLATION CHANGES.	*S	Pres. To Gov. 7/9/ 2008	06-10-08	06-25-08
H1168	E. Warren	PITT COUNTY PROTEST PETITIONS.	*S	Ref To Com On Judiciary II (Criminal)	05-02-07	
H1243	Bryant	COURTROOM PROCEDURES/ JUVENILE PROCEEDINGS.	*SR	Ch. SL 2007-100	05-21-07	06-11-07
H1277	T. Harrell	DRIVERS LICENSE REVOCATION FOR ABC VIOLATION.	*SR	Ch. SL 2007-537	05-22-07	07-16-07
H1287	Sutton	REPORT DENIAL OF SOME PISTOL PERMITS.	*S	Ref To Com On Judiciary II (Criminal)	05-07-07	
H1291	Womble	NC RACIAL JUSTICE ACT.	S	Ref To Com On Judiciary II (Criminal)	05-29-07	
322	Clary	FIRE CHIEFS/EMS DIRECTOR: CRIM. REQUESTS.	*SR	Ch. SL 2007-479	05-07-07	07-03-07
H1347	Holloway	FALSE REPORT/MASS VIOLENCE AT SCHOOL.	*SR	Ch. SL 2007-196	05-09-07	06-26-07
H1359	Wiley	IMMUNITY/VETS REPORTING ANIMAL CRUELTY.	SR	Ch. SL 2007-232	04-26-07	06-28-07
H1366	Glazier	SCHOOL VIOLENCE PREVENTION ACT.	*S	Conf Rpt Rtn To Conf Com	05-29-07	07-31-07
H1372	Folwell	ORGAN AND TISSUE DONATION/THE HEART PREVAILS.	*SR	Ch. SL 2007-538	06-20-07	07-23-07
H1479	Glazier	JUVENILE CONTEMPT/ PROCEDURES AND SANCTIONS.	*SR	Ch. SL 2007-168	05-24-07	06-14-07
H1482	Glazier	AMEND CIVIL NO-CONTACT ORDER LAWS.	SR	Ch. SL 2007-199	05-15-07	06-26-07
H1487	Blue	STATE BAR CHANGES.	*SR	Ch. SL 2007-200	05-08-07	06-25-07
H1500	Glazier	DNA EVIDENCE/PRESERVE & ACCESS BY DEFENDANT.	*SR	Ch. SL 2007-539	05-16-07	07-18-07
H1549	McGee	AMEND APPT. PROCESS FOR AUCTIONEERS COMM/ N.	*S	Pres. To Gov. 7/ 10/2008	05-08-07	06-19-07
H1549	McGee	AMEND APPT. PROCESS	*S	Pres. To Gov. 7/	07-10-07	07-07-08

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2007-2008 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		FOR AUCTIONEERS COMM/ N.		10/2008		
H1617	Barnhart	INVESTIGATIONS OF DEADLY FORCE.	SR	Ch. SL 2007-129	05-09-07	06-19-07
H1634	Martin	CUSTODY/VISITATION/ MILITARY ORDERS.	*SR	Ch. SL 2007-175	05-16-07	06-19-07
H1659	Fisher	CRIMINAL HISTORY CHECKS/DPI EMPLOYEES.	*SR	Ch. SL 2007-516	07-11-07	07-23-07
H1707	McLawhorn	DETENTION OFFICERS COURTHOUSE FIREARMS.	SR	Ch. SL 2007-474	05-24-07	07-19-07
H1708	Stam	"SUBJECT TO " REAL ESTATE TRANSACTIONS.	*S	Re-ref Com On Judiciary I (Civil)	05-09-07	05-21-07
H1787	Adams	EXPUNCTION INFO/ DISMISSAL OR NOT GUILTY.	*S	Ref To Com On Judiciary II (Criminal)	07-23-07	
H1810	Ross	VAWA 2005 COMPLIANCE.	*SR	Ch. SL 2007-294	05-16-07	07-17-07
H2105	Glazier	COMPENSATION FOR ERRONEOUSLY CONVICTED.	*S	Pres. To Gov. 7/ 18/2008	07-03-08	07-16-08
H2178=	Ross	ELECTRONIC VOTING FOR NONPROFITS.	SR	Ch. SL 2008-37	06-03-08	06-24-08
H2189=	McLawhorn	DV VICTIM ASSISTANCE.	SR	Ch. SL 2008-4	06-03-08	06-10-08
H2287=	Ross	SERVICE OF PROCESS/ ELECTRONIC OR FAX RECEIPT.	*SR	Ch. SL 2008-36	06-03-08	06-24-08
H2338=	Weiss	HOSPITAL REPORT CHILD INJURIES.	*S	Pres. To Gov. 7/9/ 2008	06-26-08	07-03-08
H2390=	Bordsen	RAISE CEILING ON PERSONAL PROP. SALE/ GUARDIAN.	*SR	Ch. SL 2008-87	06-23-08	06-26-08
H2397=	Bordsen	NURS. HOME ADMIN CRIM. HIST.	*S	Pres. To Gov. 7/ 18/2008	07-16-08	07-16-08
H2397=	Bordsen	NURS. HOME ADMIN CRIM. HIST.	*S	Pres. To Gov. 7/ 18/2008	07-17-08	07-17-08
H2492	Justus	AMEND RELEASE OF JUVENILE ESCAPE INFO.	*S	Pres. To Gov. 7/ 17/2008	06-23-08	06-25-08
S0004	John Snow	REPORT RACE AND ETHNICITY DATA-PUBLIC HEALTH.	*S	Pres. To Gov. 7/ 18/2008	02-12-07	03-13-07
S0005	John Snow	METHADONE DISTRIBUTION/2ND DEGREE MURDER.	*S	Re-ref Com On Appropriations/ Base Budget	02-12-07	04-04-07
S0021	John Snow	CLARIFY DOG FIGHTING AND BAITING LAW.	*SR	Ch. SL 2007-181	02-12-07	03-15-07
S0034=	A. B Swindell	KILL POLICE ANIMAL.	*SR	Ch. SL 2007-80	02-12-07	03-13-07
S0083=	John Snow	AMEND DOMESTIC CRIM. TRESPASS.	*S	Ref To Com On Rules, Calendar, and Operations of the House	02-12-07	04-30-07
S0092	Stan Bingham	DANGEROUS DOGS/ FINANCIAL RESPONSIBILITY	*S	Ref To Com On Judiciary III	02-12-07	05-08-07
S0132	Walter H. Dalton	PROTECT CHILDREN FROM SEXUAL PREDATORS ACT.	*S	Pres. To Gov. 7/ 18/2008	02-14-07	05-17-07
S0184	Walter H. Dalton	PROTECT JUDICIAL OFFICER SAFETY	*SR	Ch. SL 2007-29	02-15-07	03-06-07

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0222=	W. Edward (Eddie	ARMED ROBBERY/ APPARENT FIREARMS.	*S	Re-ref Com On Appropriations/ Base Budget	02-21-07	05-17-07
222=	W. Edward (Eddie	ARMED ROBBERY/ APPARENT FIREARMS.	*S	Re-ref Com On Appropriations/ Base Budget	07-19-07	07-25-07
S0261=	Katie G. Dorsett	ACCESS TO INFORMATION FOR ADULT ADOPTEES.	S	Ref To Com On Judiciary ll (Criminal)	02-22-07	
S0333	Charlie S. Danne	EXTEND AGE CUTOFF/ CHILD SUPPORT.	S	Ref To Com On Judiciary ll (Criminal)	02-26-07	
S0393	David F. Weinste	FELONY/STEAL OR CUT ANOTHER'S TIMBER.	*S	Re-ref Com On Appropriations/ Base Budget	02-28-07	04-04-07
S0470	Larry Shaw	DRIVERS LICENSE FIX EXPIR./8-YEAR TO 65	*S	Re-ref Com On Appropriations/ Base Budget	04-05-07	04-17-07
S0482	John Snow	USE OF EMERGENCY DOORS/COMMISSION OF LARCENY.	S	Ref To Com On Judiciary ll (Criminal)	03-05-07	
S0543=	Fletcher L. Hart	RESALE TICKETS VIA INTERNET	*S	Re-ref Com On Judiciary II	03-07-07	04-10-07
S0544=	Fletcher L. Hart	CABARRUS HOSPITAL CHARTER.	*SR	Ch. SL 2007-113	03-07-07	04-24-07
S0613=	Fletcher L. Hart	2007 TECHNICAL CORRECTIONS ACT	*SR	Ch. SL 2007-484	03-12-07	03-20-07
$ S0657	**Charlie S. Danne**	**STUDY COMM. ON STATE CIVIL RIGHTS ENFORCEMENT**	***S**	**Re-ref Com On Rules and Operations of the Senate**	**03-12-07**	**07-27-07**
677=	Doug Berger	EXPUNGE NONVIOLENT FELONY/YOUTHFUL OFFENDER.	*S	Re-ref Com On Finance	03-13-07	04-25-07
S0678	Doug Berger	ELECT DISTRICT JUDGES AT PRIMARY.	S	Ref To Com On Judiciary ll (Criminal)	03-13-07	
S0685=	Eleanor Kinnaird	UP PENALTIES CROSS BURN/ILLEG. TO HANG NOOSE.	*S	Pres. To Gov. 7/ 18/2008	05-15-07	05-22-07
S0704	W. Edward (Eddie	EMINENT DOMAIN ATTORNEYS' FEES/COSTS.	S	Ref To Com On Judiciary II (Criminal)	03-14-07	
S0728	Fletcher L. Hart	MEDIATION IN DISTRICT CRIMINAL COURTS.	*SR	Ch. SL 2007-387	03-14-07	05-15-07
S0733	Fletcher L. Hart	RENUNCIATION AMENDMENTS.	S	Ref To Com On Judiciary II (Criminal)	03-14-07	
S0735=	Walter H. Dalton	MEDIATION OF PROPERTY INSURANCE CLAIMS.-AB	S	Ref To Com On Insurance	03-14-07	04-02-07
S0758	John H. Kerr III	LIMITED DRIVING PRIVILEGE - DWLR.	*SR	Ch. SL 2007-293	03-14-07	04-02-07
S0777=	W. Edward (Eddie	AMEND CPA CRIMINAL PUNISHMENT.	*SR	Ch. SL 2007-83	03-15-07	04-10-07
S0785=	John H. Kerr III	ATV USE FOR EMERGENCIES.-AB	S	Ref To Com On Judiciary II	03-15-07	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				(Criminal)		
S0789	Fletcher L. Hart	SPEEDING TO ELUDE ARREST/AGGRAVATING FACTORS.	*S	Re-ref Com On Appropriations/ Base Budget	03-15-07	05-17-07
S0790=	Fletcher L. Hart	TEST. ADDITIONS TO TRUSTS/WILL REFERENCES.	S	Ref To Com On Judiciary II (Criminal)	03-15-07	
S0850=	Fletcher L. Hart	SCHOOL BUS SAFETY.	S	Ref To Com On Judiciary II (Criminal)	03-19-07	
S0854	John Snow	AMEND PRIVATE PROTECTIVE SERVICES ACT.	*SR	Ch. SL 2007-511	03-19-07	06-25-07
S0855	John Snow	EXEMPT PRIVATE INVESTIGATORS/WINDOW TINTING.	*SF	Failed 2nd Reading	03-19-07	05-22-07
S0880	Doug Berger	BAIL BONDS/AMEND FORFEITURE REQUIREMENT.	*SR	Ch. SL 2007-105	03-19-07	04-30-07
S0881	Doug Berger	DEFINE RESIDENCY REQUIREMENTS/BAIL BONDSMEN	*SR	Ch. SL 2007-228	03-19-07	04-25-07
S0930	Ed Jones	PRIVATE CORRECTIONAL OFFICERS.	*SR	Ch. SL 2007-162	03-20-07	05-14-07
S0940=	Katie G. Dorsett	LEGISLATIVE ACCESS TO RETIREMENT DATABASES.	*SR	Ch. SL 2007-103	03-20-07	05-14-07
S0944=	Walter H. Dalton	CHANGE PENALTY FOR HIT AND RUN VIOLATIONS.	*S	Pres. To Gov. 7/ 14/2008	03-20-07	05-01-07
S0947	Kay R. Hagan	UNIFORM TRUST CODE CHANGES.	*SR	Ch. SL 2007-106	03-20-07	04-24-07
S0988	Doug Berger	ILLEGAL IMMIGRANTS TAX COLLECTION ENFORCEMENT.	S	Re-ref Com On Appropriations/ Base Budget	03-20-07	05-22-07
S0989	Doug Berger	GENITAL MUTILATION/ CRIMINAL OFFENSE.	S	Ref To Com On Judiciary II (Criminal)	03-20-07	
S1019	Fletcher L. Hart	INVESTIGATIONS OF CORPORATIONS/ PARTNERSHIPS.	S	Ref To Com On Judiciary II	03-21-07	05-17-07
S1020=	Fletcher L. Hart	REVISE SIMULTANEOUS DEATH ACT.	S	Ref To Com On Judiciary II (Criminal)	03-21-07	
S1022	Fletcher L. Hart	ELECTRONIC PUBLICATION OF PUBLIC NOTICE.	S	Ref To Com On Judiciary II (Criminal)	03-21-07	
S1023=	Fletcher L. Hart	LOCAL SPA EMPLOYEE STATUS/UNC PUBLIC RECORDS.	*SR	Ch. SL 2007-372	03-21-07	05-16-07
S1026=	Fletcher L. Hart	DRIVERS LICENSE ISSUANCE/EXPIRATION DATES.	*SR	Ch. SL 2007-56	03-21-07	04-02-07
S1026=	Fletcher L. Hart	DRIVERS LICENSE ISSUANCE/EXPIRATION DATES.	*SR	Ch. SL 2007-56	04-04-07	04-10-07
S1046	Fletcher L. Hart	YADKIN PROJECT STUDY.	*S	Pres. To Gov. 7/	03-21-07	05-08-07

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

2007-2008 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				18/2008		
S1049=	Fletcher L. Hart	PROTECT MINOR/PORNO. & PROSTITUTION OFFENSES.	S	Ref To Com On Judiciary II (Criminal)	03-21-07	
S1202	Jim Jacumin	EST. COMMISSION ON LITTERING/STUDY	*S	Re-ref Com On Rules and Operations of the Senate	03-26-07	06-25-07
S1219	W. Edward (Eddie	NO CONTINGENT FEES - ECONOMIC DEVELOPMENT.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1270=	John Snow	AMEND LARCENY LAWS.	*SR	Ch. SL 2007-373	03-26-07	05-08-07
S1279	John Snow	LIMIT LIABILITY/WHITE-WATER RAFTING.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1282	John Snow	WILDLIFE PROTECTORS TO ENFORCE CRIMINAL LAWS.	S	Ref to the Com on Wildlife Resources and, if favorable, to the Com on Judiciary III	03-26-07	05-17-07
S1284=	John Snow	MODIFY SCHOOL EMPLOYEE CONFIDENTIALITY LAW.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1285	John Snow	BIOPTIC LENSES/ DRIVERS LICENSE TESTS.	S	Re-ref Com On Appropriations/ Base Budget	03-26-07	05-17-07
S1286	John Snow	ENTRY OF INSPECTORS ONTO PRIVATE LANDS.	S	Re-ref Com On Judiciary II (Criminal)	03-26-07	05-17-07
1286	John Snow	ENTRY OF INSPECTORS ONTO PRIVATE LANDS.	S	Re-ref Com On Judiciary II (Criminal)	05-23-07	
S1287	John Snow	JUDICIAL DEPARTMENT ACCESS TO SSN INFORMATION.	*SR	Ch. SL 2007-249	03-26-07	05-17-07
S1359	Austin M. Allran	RED LIGHT EXCEPTION FOR MOTORCYCLES.	*SR	Ch. SL 2007-260	03-26-07	04-24-07
S1359	Austin M. Allran	RED LIGHT EXCEPTION FOR MOTORCYCLES.	*SR	Ch. SL 2007-260	04-25-07	05-16-07
S1399	Charlie S. Danne	BAN MOBILE PHONE USE WHILE DRIVING.	*S	Re-ref Com On Judiciary II (Criminal)	03-26-07	05-23-07
S1399	Charlie S. Danne	BAN MOBILE PHONE USE WHILE DRIVING.	*S	Re-ref Com On Judiciary II (Criminal)	05-24-07	
S1407=	Fletcher L. Hart	RESALE OF TICKETS VIA INTERNET.	*S	Pres. To Gov. 7/ 18/2008	03-26-07	05-17-07
S1408	Fletcher L. Hart	CLARIFY DISCIPLINARY ACTION/APPRAISERS BOARD.	*SR	Ch. SL 2007-447	03-26-07	05-17-07
S1430	Bob Atwater	AMEND CRIM OFFENSES/ INJURY TO PROPERTY.	*S	Re-ref Com On Appropriations/ Base Budget	03-26-07	05-17-07
S1432	Bob Atwater	CHALLENGE TO ADMINISTRATIVE	*SR	Ch. SL 2007-251	03-26-07	05-22-07

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2007-2008 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		SUBPOENA.				
S1449=	John Snow	REGULATE SALES/GLASS VIALS & CIGARETTE WRAP.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1460	Fletcher L. Hart	STRENGTHEN RAPE SHIELD LAW.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1461=	Fletcher L. Hart	AGGRAVATING FACTOR/NO PROBATION COMPLIANCE.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1477=	Ed Jones	INHERENTLY DANGEROUS ANIMALS.	S	Ref To Com On Judiciary II (Criminal)	03-26-07	
S1491=	Fletcher L. Hart	PROHIBIT BLUNT WRAPS	*S	Ref To Com On Judiciary II	03-27-07	05-17-07
S1631=	Fletcher L. Hart	ELECTRONIC VOTING/ OPEN MEETINGS.	*SR	Ch. SL 2008-111	05-19-08	06-05-08
S1632=	Fletcher L. Hart	2008 TECHNICAL CORRECTIONS ACT.	*S	Pres. To Gov. 7/ 18/2008	05-19-08	07-15-08
S1651=	Fletcher L. Hart	ANATOMICAL GIFTS.	*S	Pres. To Gov. 7/9/ 2008	05-20-08	06-16-08
$ S1793=	**Walter H. Dalton**	**HFA / EXPAND HOME PROTECTION PROGRAM.**	***S**	**Re-ref Com On Appropriations/ Base Budget**	**05-21-08**	**06-04-08**
S1851=	Fletcher L. Hart	SERVICE OF PROCESS/ ELECTRONIC OR FAX RECEIPT.	*S	Ref To Com On Judiciary I	05-22-08	06-09-08
S1860=	Austin M. Allran	AMEND CHILD ABUSE/ CHILD FATALITY TASK FORCE.	*S	Pres. To Gov. 7/ 15/2008	05-22-08	06-09-08
1860=	Austin M. Allran	AMEND CHILD ABUSE/ CHILD FATALITY TASK FORCE.	*S	Pres. To Gov. 7/ 15/2008	07-02-08	07-10-08
S1988	Doug Berger	UNLAWFUL TO BURN CROSS/HANG NOOSE.	*S	Ref To Com On Judiciary II	05-28-08	06-11-08

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Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 3, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 946	Vandalism Damages More Than $5,000/Felony.	Representative Goforth Representative Yongue Representative Sutton Representative Grady
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson
SB 1631	Electronic Voting for Nonprofits.	Senator Hartsell
SB 1793	HFA / Expand Home Protection Program.	Senator Dalton
SB 1851	Service of Process/Electronic or Fax Receipt.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 3, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 946	Vandalism Damages More Than $5,000/Felony.	Representative Goforth Representative Yongue Representative Sutton Representative Grady
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson
SB 1631	Electronic Voting for Nonprofits.	Senator Hartsell
SB 1793	HFA / Expand Home Protection Program.	Senator Dalton
SB 1851	Service of Process/Electronic or Fax Receipt.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Presentations

Other Business

Adjournment

Senate Judiciary II Committee

Minutes

June 3, 2008

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 3, 2008, with sixteen members present. He then introduced the staff members and noted the new members, Jeff Hudson and Trina Griffin. Senator Hartsell recognized and introduced pages Nathan Honaker, Kevin Palk, Sarah Grace Clark, Jessie Nipp, Crystal Edwards and Myles Cottingham. Senator Hartsell recognized and congratulated Nathan Honaker for his honor of being chosen to direct the Symphony at Carnegie Hall and also being chosen as First Chair for Oboe.

HB 946 (Vandalism Damages More Than $5,000/Felony.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Jacumin so moved, all voted and the motion carried. Representative Grady was recognized to explain the bill. Questions were asked by Senators Apodaca, Jones, Jacumin, Dalton, Kerr, Goodall, Snow and Bingham. Senator Dalton presented an amendment and after additional discussion, he withdrew the amendment. Mr. Paul Wilms, representing the North Carolina Home Builders Association, and Ms. Kayley Taber, Assistant District Attorney for Orange and Chatham County, spoke in favor of the bill. Senator Bingham moved for a favorable report to the Proposed Committee Substitute. All voted and the motion carried.

SB 1793 (HFA/Expand Home Protection Program.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell recognized Senator Dalton to explain the bill. Mr. Kucab, Director of the North Carolina Housing Finance Agency, spoke in favor of the bill, as did Ms. Louise Mack, representing Prosperity Unlimited. Ms. Nelda Davis spoke as a participant in the program. After questions from Senators Goodall, Kerr, and Allran, Senator Swindell moved for a favorable report to the Proposed Committee Substitute with a Serial Referral to Appropriations. All voted and the motion carried.

HB 1003 (Aggravating Factor/No Probation Compliance.) Representative Linda Johnson was recognized to present the bill. Senator Berger moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Johnson requested that Mr. Jeff Husdon, Staff Attorney, explain the bill. Senator Allran moved for a favorable report, all voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, June 04, 2008

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **946** Vandalism Damages More Than $5,000/Felony.

Draft Number:	50976
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, June 04, 2008

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

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

S.B. **1793** HFA / Expand Home Protection Program.

Draft Number:	55723
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	Yes

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

S.B. **1003** Aggravating Factor/No Probation Compliance.

Draft Number:	50975
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 3, 2008
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Stock	NCBA
Betty Tunn	BAC
Alex MacFadyen	First Citizens
Nathan Bates	NCBA
Willie Edwards	Mi Shanks' Assn.
Kerri Roseman	Prosperity Unlimited Concepts PO Box 1095
Louise Mack	Prosperity Unlimited 28026
Floyd Lewis	General Statutes Commission
P. Bay Hall	"
AL DEITCH	DOA/YATO
TOM VITAGLIONE	CFTF

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Selena Childs	CFTF
Kim McLeod	CFSA - NC
Al Ripley	NC - Justice Ctr
Chris Kelly	CRC
Laura Barrington	John Locke Foundation
John Madler	NC Sentencing Commission
James Green	Intern for Senator Doug Berger
John Phelps	NCLM
Peg Dorer	Conference of DAs
Jill Jacobson	NCVAN

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 3. 08

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Jim Stewart	IFNC
Laura Parker	NC Conference of District Attorneys
Ebonie Alexander	NC Initiative
Nelda Davis	Property Unlimited
BOB KUCPB	NCHTA
Lucius Jones	NCHFA
Charlene B Smith	NCHFA
Margaret Kentrone	NCHFA
Brent Lucas	FRD
Seth Dobson	

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leann McCallister	Nelson Mullins
Phillip Harris	" "
Cady Thomas	NCAR
Dave Simpson	Carolinas AGC
Ethelene France	
Perry Carroll	Stokes Partnership for Children
Dianne Durham	Stokes Partnership for Children
Andy Romanet	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 946

Committee Substitute Favorable 4/26/07

Short Title: Vandalism Damages More Than $5,000/Felony. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE AN OFFENSE OF VANDALISM THAT RESULTS IN MORE THAN FIVE THOUSAND DOLLARS IN DAMAGES A CLASS I FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-144 reads as rewritten:

"**§ 14-144. Injuring houses, churches, fences and walls.**

If any person shall, by any other means than burning or attempting to burn, unlawfully and willfully demolish, destroy, deface, injure or damage any of the houses or other buildings mentioned in this Chapter in the Article entitled Arson and Other Burnings; or shall by any other means than burning or attempting to burn unlawfully and willfully demolish, pull down, destroy, deface, damage or injure any church, uninhabited house, outhouse or other house or building not mentioned in such article; or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other enclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used, every person so offending shall be ~~guilty of a Class 2 misdemeanor.~~punished as follows:

(1) If the damage is five thousand dollars ($5,000) or less, the person is guilty of a Class 2 misdemeanor.

(2) If the damage is more than five thousand dollars ($5,000), the person is guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 946

Committee Substitute Favorable 4/26/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H946-CSRD-49 [v.1]

5/28/2008 11:03:46 AM

Short Title: Vandalism Damages More Than $5,000/Felony. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE AN OFFENSE OF VANDALISM THAT RESULTS IN MORE THAN FIVE THOUSAND DOLLARS IN DAMAGES A CLASS I FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-144 reads as rewritten:

"**§ 14-144. Injuring houses, churches, fences and walls.**

If any person shall, by any other means than burning or attempting to burn, unlawfully and willfully demolish, destroy, deface, injure or damage any of the houses or other buildings mentioned in this Chapter in the Article entitled Arson and Other Burnings; or shall by any other means than burning or attempting to burn unlawfully and willfully demolish, pull down, destroy, deface, damage or injure any church, uninhabited house, outhouse or other house or building not mentioned in such article; or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other enclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used, every person so offending shall be ~~guilty of a Class 2 misdemeanor.~~ punished as follows:

(1) If the damage is five thousand dollars ($5,000) or less, the person is guilty of a Class 2 misdemeanor.

(2) If the damage is more than five thousand dollars ($5,000), the person is guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

HOUSE BILL 946:
Vandalism Damages More Than $5,000/Felony

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	May 28, 2008
Introduced by:	Reps. Grady, Goforth, Sutton, Yongue	**Summary by:**	Ben Popkin
Version:	PCS to Second Edition H946-CSRD		Committee Counsel

SUMMARY: ***House Bill 946 would provide for an increased penalty for vandalism of houses, buildings, and other structures that results in more than $5,000 in damages, making it a Class I felony rather than a Class 2 misdemeanor. The Proposed Committee Substitute to House Bill 946 updates the effective date from December 2007 to December 2008.***

CURRENT LAW: Under G.S. 14-444, it is Class 2 misdemeanor to unlawfully and willfully destroy, deface, or otherwise damage houses or other buildings -- including churches, buildings owned or occupied by State or local government entities, public or private schools & colleges, and mobile and manufactured housing. The law also applies to fences, walls and other enclosures. Assuming the offender has no prior convictions, a Class 2 misdemeanor is punishable by 1-30 days community punishment. The disposition may include such things as probation, community service, restitution and/or fines. The maximum fine for a Class 2 misdemeanor is $1,000.

BILL ANALYSIS: House Bill 946 would amend the law pertaining to the criminal offense of destroying, defacing, or otherwise damaging houses, buildings, and other structures. The bill would retain the Class 2 misdemeanor classification for offenses that involve damage of $5,000 or less. Offenses resulting in damage of more than $5,000 would be punishable as a Class I felony. Assuming no prior convictions, the presumptive minimum sentence for a Class I felony is 4-6 months community punishment. The disposition may include such things as probation, community service, restitution and/or fines. The amount of the fine would be in the discretion of the court.

EFFECTIVE DATE: The bill would become effective December 1, 2008 and apply to offenses committed on or after that date

Brenda Carter, counsel to House Judiciary III, substantially contributed to this summary.

H0946e2-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 1003*
Second Edition Engrossed 5/15/07

Short Title:	Aggravating Factor/No Probation Compliance.	(Public)
Sponsors:	Representatives Johnson, Barnhart, Steen (Primary Sponsors); Faison, Moore, and Tillis.	
Referred to:	Judiciary II.	

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S PRIOR FAILURES TO COMPLY WITH CONDITIONS OF RELEASE WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant previously willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision. A willful noncompliance more than 10 years past shall not be considered."

SECTION 2. This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1003*

Second Edition Engrossed 5/15/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1003-CSSB-60 [v.1]

5/28/2008 10:52:57 AM

Short Title: Aggravating Factor/No Probation Compliance. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S PRIOR WILLFUL FAILURES TO COMPLY WITH CONDITIONS OF RELEASE WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision during the 10-year period prior to the commission of the offense for which the defendant is being sentenced."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

HOUSE BILL 1003:
Aggravating Factor/No Probation Compliance

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 3, 2008
Introduced by:	Reps. Johnson, Barnhart, Steen	**Summary by:**	Jeff Hudson
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1003 would provide that a court may consider a defendant's willful prior failure to comply with conditions of release when placed on supervised probation, parole, or post-release supervision as an aggravating factor for purposes of sentencing.***

[As introduced, this bill was identical to S1461, as introduced by Sen. Hartsell, which is currently in Senate Judiciary II (Criminal).]

CURRENT LAW: Structured sentencing applies to offenses committed on or after October 1, 1994. Under structured sentencing, a court must take the following steps to determine the appropriate sentence for felonies under structured sentencing:

- Determine the offense class.
- Determine the prior record level for the defendant.
- ***Consider aggravating and mitigating factors.***
- Select a minimum sentence from the applicable minimum sentence range.
- Determine the maximum sentence.
- Determine the sentence disposition (active, intermediate, or community).

The sentencing grid contains three ranges of punishment for felonies: presumptive, aggravated, and mitigated. To determine the range in which to sentence a defendant, the court must consider any evidence of aggravating and mitigating factors. The statutory aggravating factors are set out in G.S 15A-1340.16(d) (attached below). If the court finds that aggravating factors are present and outweigh any mitigating factors, it may depart from the presumptive range of punishment and impose a term of punishment from the aggravated range. Evidence necessary to prove an element of the offense can not be used to prove any factor in aggravation, and the same item of evidence can not be used to prove more than one factor in aggravation.

BILL ANALYSIS:

House Bill 1003 would provide that a court may consider a defendant's willful prior failure to comply with conditions of release when placed on supervised probation, parole, or post-release supervision as an aggravating factor for purposes of sentencing. House Bill 1003 limits the consideration of willful failures to comply with conditions of release to those willful failures to comply occurring within the 10 years prior. It is unclear as to 10 years prior to what event; commission of the crime for which the defendant is being sentenced, the time of sentencing, etc.

EFFECTIVE DATE:

House Bill 1003 would become effective December 1, 2007, and apply to offenses committed on or after that date.

H1003e2-SMSB

§ 15A-1340.16. Aggravated and mitigated sentences.

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

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.

(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1631*

Short Title:	Electronic Voting for Nonprofits.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO ALLOW CERTAIN VOTES BY ELECTRONIC TRANSMISSION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(9) "Effective date of notice" is defined in G.S. 55A-1-41.

(9a) 'Electronic' has the same meaning as in G.S. 66-312.

(9b) 'Electronic record' has the same meaning as in G.S. 66-312.

(9c) 'Electronic signature' has the same meaning as in G.S. 66-312.

(10) "Entity" includes:

a. Any domestic or foreign:

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

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

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

...

(26) "Vote" includes authorization by written ballot and written ~~consent.~~ consent, including electronic ballot and electronic consent."

SECTION 2. G.S. 55A-1-41 reads as rewritten:

"**§ 55A-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the member's address shown in the corporation's current record of members. To the extent the corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic corporation to its member in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A member may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

(e) Except as provided in subsection (c) of this section, written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;

(5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who

have the same address, the corporation's bylaws may provide that a single notice may be given to such members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice."

SECTION 3. Article 1 of Chapter 55A of the General Statutes is amended by adding a new Part to read:

"Part 7. Miscellaneous.

"**§ 55A-1-70. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 4. G.S. 55A-7-04 reads as rewritten:

"**§ 55A-7-04. Action by written consent.**

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 5. G.S. 55A-7-08 reads as rewritten:

"**§ 55A-7-08. Action by written ballot.**

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with

information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked."

SECTION 6. G.S. 55A-7-24 reads as rewritten:

"**§ 55A-7-24. Proxies.**

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for ~~him~~ the member by signing an appointment form, either personally or by ~~his~~ the member's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~ Without limiting G.S. 55A-1-70, an appointment in the form of an electronic record that bears the member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii)~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or

incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 7. G.S. 55A-8-21 reads as rewritten:

"**§ 55A-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 8. This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1793*

Short Title:	HFA / Expand Home Protection Program.	(Public)
Sponsors:	Senators Dalton, Dorsett; Atwater, and Jones.	
Referred to:	Judiciary II (Criminal).	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO CONTINUE AND EXPAND THE NORTH CAROLINA HOUSING FINANCE AGENCY'S HOME PROTECTION PROGRAM TO EVERY COUNTY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The North Carolina Housing Finance Agency shall continue, develop, implement, and administer a program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

(1) Develop and administer the North Carolina Home Protection Program and Loan Fund to ensure that workers in North Carolina have assistance to avoid losing their homes to foreclosure.

(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

(4) Designate, approve, and fund nonprofit counseling agencies in North Carolina to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.

(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

(6) No later than April 1, 2009, report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on the effectiveness of the Program in accomplishing its purposes and

provide any other information the Agency determines is pertinent or that the General Assembly requests.

SECTION 1.(b) As used in this section, the following definitions apply:

(1) Agency. – The North Carolina Housing Finance Agency.

(2) Counseling agency. – A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

(3) Mortgage. – An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. "Mortgage" also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

(4) Mortgagee. – The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

SECTION 1.(c) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following for a period of 120 days following the date of the mortgagor's properly filed application:

(1) Accelerate the maturity of any mortgage obligation covered under this section.

(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

(3) Take possession of any security of the mortgagor for the mortgage obligation.

(4) Procure or receive a deed in lieu of foreclosure.

(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure.

The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within 10 business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

SECTION 1.(d) Rule Making. – Solely with respect to the adoption of procedures for the program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.

(2) Accept oral and written comments on the proposed procedures.

(3) Hold at least one public hearing on the proposed procedures.

SECTION 2. There is appropriated from the General Fund to the North Carolina Housing Finance Agency the sum of three million dollars ($3,000,000) in recurring funds for the 2008-2009 fiscal year for the North Carolina Home Protection Program. Funds appropriated under this act to the North Carolina Housing Finance Agency that are unexpended and unencumbered shall not revert but shall remain available to be used by the North Carolina Housing Finance Agency for the North Carolina Home Protection Program.

SECTION 3. This act becomes effective on July 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1793*
PROPOSED COMMITTEE SUBSTITUTE S1793-CSRI-38 [v.3]

6/2/2008 12:14:14 PM

Short Title: HFA / Expand Home Protection Program. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE NORTH CAROLINA HOUSING FINANCE AGENCY'S HOME PROTECTION PROGRAM TO EVERY COUNTY IN NORTH CAROLINA AND TO APPROPRIATE FUNDS TO THE HOUSING FINANCE AGENCY FOR THE HOME PROTECTION PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 122A of the General Statutes is amended by adding a new section to read:

"**§ 122A-5.14. Home Protection Program.**

(a) The North Carolina Housing Finance Agency shall develop, implement, and administer a program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

(1) Develop and administer the North Carolina Home Protection Program and Loan Fund to ensure that workers in North Carolina have assistance to avoid losing their homes to foreclosure.

(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

(4) Designate, approve, and fund nonprofit counseling agencies in North Carolina to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.

(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local

nonprofit counseling agencies, and may apply for loans from the Agency.

(6) Report annually on April 1 to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests.

(b) As used in this section:

(1) "Agency" means the North Carolina Housing Finance Agency.

(2) "Counseling agency" means a nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

(3) "Mortgage" means an obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. "Mortgage" also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

(4) "Mortgagee" means the owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

(c) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do any of the following for a period of 120 days following the date of the mortgagor's properly filed application:

(1) Accelerate the maturity of any mortgage obligation covered under this section.

(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

(3) Take possession of any security of the mortgagor for the mortgage obligation.

(4) Procure or receive a deed in lieu of foreclosure.

(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure.

(d) The provisions of subsection (c) this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

(e) If a mortgagee acts as proscribed in subdivisions (1) through (6) of subsection (c) of this section, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

(f) Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within 10 business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee."

SECTION 2. Solely with respect to the adoption of procedures for the program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.

(2) Accept oral and written comments on the proposed procedures.

(3) Hold at least one public hearing on the proposed procedures.

SECTION 3. There is appropriated from the General Fund to the North Carolina Housing Finance Agency the sum of three million dollars ($3,000,000) in recurring funds for the 2008-2009 fiscal year for the North Carolina Home Protection Program. Funds appropriated under this act to the North Carolina Housing Finance Agency that are unexpended and unencumbered shall not revert but shall remain available to be used by the North Carolina Housing Finance Agency for the North Carolina Home Protection Program.

SECTION 4. This act becomes effective on July 1, 2008.

SENATE BILL 1793:
HFA / Expand Home Protection Program

BILL ANALYSIS

Committee:	Senate Ref to Judiciary II (Criminal). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 3, 2008
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to First Edition S1793-CSRI-38		

SUMMARY: Senate bill 1793 would expand the North Carolina Housing Finance Agency's Home Protection Program statewide and appropriate funds for the Program.

[As introduced, this bill was identical to H2230, as introduced by Reps. Goforth, and Underhill, which is currently in House Judiciary II, if favorable, Appropriations.]

BACKGROUND:

In 2004 the Generally Assembly created the North Carolina Home Protection Pilot Program and Loan Fund (Pilot) and directed the North Carolina Housing Finance Agency (Agency) to develop, implement, and administer the Pilot to "assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure" (S.L. 2004-124, Part XX-A). The General Assembly reauthorized and appropriated funds for the Pilot in 2005 and 2007.

According to the Agency's website, the Pilot is currently available in 61 counties (criteria under the previously enacted legislation directed that the Pilot include all counties that had greater than seven percent (7%) average unemployment in the 2004-2005 fiscal year). Displaced workers apply through participating local agencies that offer housing counseling and determine their eligibility. Qualified homeowners receive up to $20,000 in loans at 0% interest to help them make mortgage payments.

BILL ANALYSIS: Senate Bill 1793 would expand the Home Protection Program to every county in the State. The bill would also appropriate $3,000,000 for the Program.

EFFECTIVE DATE: The bill would become effective on July 1, 2008.

S1793e1-SMRI-CSRI

Home Protection Program and Loan Fund

Purpose: To help workers who lose their jobs as the result of plant closings and changing economic conditions avoid losing their homes to foreclosure.

Created: 2004

Accomplishments:

- 330 homeowners have been approved for bridge loans to help save their homes.
- 440 homeowners have benefited from a 120-day stay of foreclosure.
- 2,000 homeowners (est.) have benefited from financial counseling.
- 217 borrowers are in job training, returning to school for further education, or preparing to start new jobs.
- $40 million of property (est.) has been saved from foreclosure.

Appropriations and counties served:

2004–$1.725 million appropriation. 8 counties.
2005–$700,000 appropriation. 27 counties.
2006–$1.5 million appropriation. 27 counties.
2007–$1.5 million appropriation. 61 counties.

How it works:

- The N.C. Housing Finance Agency administers the Home Protection Program (HPP) in partnership with 16 counseling agencies.
- Displaced workers apply to a local agency for counseling and a loan application.
- Eligible workers live or work in one of the designated counties; have lost their job because of changing economic conditions; were current on their mortgage prior to losing their jobs; have a new job commitment; are enrolled in approved training or education; or are in a job search with evidence that potential jobs will allow them to resume mortgage payments.
- Assistance is in the form of an interest-free, deferred loan, due and payable in 15 years or when the home is sold, refinanced, or otherwise conveyed. The loan amount is usually the lesser of $20,000, 18 months of mortgage payments, or the minimum amount required to reinstate a borrower.
- All who inquire, including those who are ineligible, receive counseling on their options for avoiding foreclosure or minimizing their loss.
- A 120-day stay of foreclosure begins when an application is deemed viable and goes under review.
- Counseling agencies receive operating support to defray the cost of their work. The N.C. Housing Finance Agency pays its own costs, which have totaled $777,000 in salaries and direct costs over 42 months.

Examples:

A Caldwell County couple who are raising three grandchildren worked in the furniture industry for many years and made their house payments on time until a job loss. The family was facing foreclosure when they learned about the HPP in a GED class. The grandmother is training to become a licensed practical nurse. The HPP paid the past-due amount and will make the monthly payment until she re-enters the workforce.

A Wilson County family that had experienced problems after Hurricane Floyd faced foreclosure on the home they have owned 30 years, due to a job loss. A long-term HPP loan allowed the husband to attend school full-time and the wife to secure a job in the county school system.

The Bladen County mother of a disabled son was a certified nursing assistant until her employer closed. Five months behind on her mortgage, she obtained employment, but with lesser pay. The HPP brought her mortgage, property taxes, and property insurance current. With budgeting help, she is adjusting to her reduced income and has started a savings account.

In Forsyth County, a young single mother was laid off from her manufacturing job and was in danger of losing her new home. With HPP assistance, she enrolled in a nine-month program toward certification in radiology. She is a B+ student, on track for a better career than she ever thought possible.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1851*

Short Title:	Service of Process/Electronic or Fax Receipt.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j), reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in ~~subsection~~ subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the

addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. ~~Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served.~~

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent

appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee,

and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested,

addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to

be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – ~~Service upon~~Upon a foreign state or a political subdivision, agency, or instrumentality ~~thereof shall be effected~~thereof, pursuant to 28 U.S.C. § 1608."

SECTION 2. G.S. 1A-1, Rule 4(j2), reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of ~~G.S. 1-75.10(1).~~G.S. 1-75.10(a)(1).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service

by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or 1-75.10(6),~~G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return ~~or delivery receipt or~~ receipt, copy of the proof of delivery provided by the United States Postal ~~Service~~ Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

SECTION 3. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served."

SECTION 4. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

...

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party ~~averring:~~averring all of the following:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt ~~requested;~~requested.

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the ~~addressee; and~~addressee.

c. That the ~~genuine~~ delivery receipt or other evidence of delivery is attached.

....

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt."

SECTION 5. G.S. 1A-1, Rule 4(j1), reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of ~~G.S. 1-75.10(2),~~G.S. 1-75.10(a)(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:
Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)

_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1860*

Short Title:	Amend Child Abuse/Child Fatality Task Force.	(Public)
Sponsors:	Senators Allran; Atwater, Berger of Rockingham, Brown, Dorsett, Forrester, Hartsell, Hunt, Jacumin, Nesbitt, Purcell, Rand, and Snow.	
Referred to:	Judiciary II (Criminal).	

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR MISDEMEANOR CHILD ABUSE AND TO AMEND THE CRIMINAL OFFENSE OF FELONY CHILD ABUSE AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.2 reads as rewritten:

"**§ 14-318.2. Child abuse a Class 1 misdemeanor.**

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the ~~Class 1~~Class A1 misdemeanor of child abuse.

(b) The ~~Class 1~~ Class A1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

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

SECTION 2. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of

prostitution with or by the ~~juvenile~~ child is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon ~~a juvenile~~ the child is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony. ~~"Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.~~

(a4) A parent or any other person providing care to or supervision of a child whose willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child whose willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class G felony if the act or omission results in serious physical injury to the child.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

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

(d) The following definitions apply in this section:

(1) Serious bodily injury. – Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. 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.

Principal Clerk ____
Reading Clerk ____

2nd CORRECTED NOTICE

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 5, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1631	Electronic Voting for Nonprofits.	Senator Hartsell
SB 1851	Service of Process/Electronic or Fax Receipt.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

CORRECTED TIME CHANGE FOR MEETING

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 5, 2008	9:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1631	Electronic Voting for Nonprofits.	Senator Hartsell
SB 1851	Service of Process/Electronic or Fax Receipt.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 5, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1631	Electronic Voting for Nonprofits.	Senator Hartsell
SB 1851	Service of Process/Electronic or Fax Receipt.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Presentations

Other Business

Adjournment

Senate Judiciary II Committee

Minutes

June 5, 2008

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 5, 2008, with thirteen members present. Senator Hartsell introduced pages Lauren Toole, Crystal Edwards, Brianna Bowden, Myles Cottingham, Doug Brady, Erin Schoenbeck, Elizabeth Moss and Roman Blount IV and thanked them for their service.

SB 1860 (Amend Child Abuse/Child Fatality Task Force.) Sen. Allran was recognized to explain the bill. He then presented a technical amendment which was explained by Mr. Jeff Hudson, Staff Attorney. Senator Goodall moved to adopt the amendment, all voted and the motion carried. Ms. Kayley Taber, Assistant District Attorney for Orange and Chatham Counties spoke in favor of the bill. Senator Bingham moved for a favorable report, as amended and rolled into a new Committee Substitute. All voted and the motion carried.

SB 1631 (Electronic Voting for Non profits.) As this was Senator Hartsell's bill, Senator Jones presided. Senator Hartsell explained the bill and asked that Mr. Jim Johnson, representing the Center for Non Profits, be recognized to give additional explanation. Senator Goodall moved for a favorable report. All voted and the motion carried. As the wrong bill number had been announced, Senator East moved to recall the vote All voted and the motions carried.. The correct number was announced, all voted again and the motion carried.

SB 1851 (Service of Process/Electronic or Fax Receipt.) Senator Jones recognized Senator Hartsell to explain the bill. Senator Hartsell moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Floyd Lewis, representing the General Statutes Commission, gave additional explanation. Senator East moved for a favorable report, all voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 05, 2008

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

FAVORABLE

S.B. **1631** Electronic Voting for Nonprofits.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 09, 2008

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

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

S.B. **1851** Service of Process/Electronic or Fax Receipt.

Draft Number:	55727
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1860** Amend Child Abuse/Child Fatality Task Force.

Draft Number:	15293
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6/5/2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Selena Childs	Child Fatality Task Force
Tom Vitagliano	CFTF
KAYLEY TABER	Asst. District Attorney Dist. 15B Orange/Chatham
Ken Melvin	CCSA-NC
Jim Johnson	BSA
David Heinen	NC Center for Nonprofits
Floyd Lewis	General Statutes Commission
Jamie Gillespie	NCFPC
P. Bly Hall	General Statutes Commission
AL DE MICH	YAZO/DOA
Pete Jarvis	Gov office
Debra DeCamillis	IOG

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura Barringer	John Locke Foundation
John Phelps	NCLM
Jim Lowry	NC Utility Contractors Assn
Charles Francis	Intern (Sen. Bingham)
Laura Parker	NC Conference of DAs
John Madler	NC Sentencing Commission
Doug Hebron	Williams Mullen

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1631*

Short Title:	Electronic Voting for Nonprofits.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO ALLOW CERTAIN VOTES BY ELECTRONIC TRANSMISSION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(9) "Effective date of notice" is defined in G.S. 55A-1-41.

(9a) 'Electronic' has the same meaning as in G.S. 66-312.

(9b) 'Electronic record' has the same meaning as in G.S. 66-312.

(9c) 'Electronic signature' has the same meaning as in G.S. 66-312.

(10) "Entity" includes:

a. Any domestic or foreign:

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

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

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

...

(26) "Vote" includes authorization by written ballot and written ~~consent.~~ consent, including electronic ballot and electronic consent."

SECTION 2. G.S. 55A-1-41 reads as rewritten:

"**§ 55A-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the member's address shown in the corporation's current record of members. To the extent the corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic corporation to its member in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A member may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

(e) Except as provided in subsection (c) of this section, written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;

(5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who

have the same address, the corporation's bylaws may provide that a single notice may be given to such members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice."

SECTION 3. Article 1 of Chapter 55A of the General Statutes is amended by adding a new Part to read:

"Part 7. Miscellaneous.

"**§ 55A-1-70. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 4. G.S. 55A-7-04 reads as rewritten:

"**§ 55A-7-04. Action by written consent.**

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 5. G.S. 55A-7-08 reads as rewritten:

"**§ 55A-7-08. Action by written ballot.**

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with

information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked."

SECTION 6. G.S. 55A-7-24 reads as rewritten:

"**§ 55A-7-24. Proxies.**

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for ~~him~~ the member by signing an appointment form, either personally or by ~~his~~ the member's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~ Without limiting G.S. 55A-1-70, an appointment in the form of an electronic record that bears the member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii)~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or

incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 7. G.S. 55A-8-21 reads as rewritten:

"**§ 55A-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 8. This act becomes effective October 1, 2008.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
May 28, 2008

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 1631 (Electronic Voting for Nonprofits)**

General Comments

This bill amends Chapter 55A of the General Statutes (North Carolina Nonprofit Corporation Act) to expressly permit nonprofit corporations incorporated in this State to send notices to members and accept votes and proxies from members electronically and to accept members' and directors' consents to action taken without meeting in which the consent is given electronically. The bill also establishes the method by which nonprofit corporations may agree to conduct transactions under Chapter 55A by electronic means.

The amendments in this bill parallel amendments made to Chapter 55 of the General Statutes (North Carolina Business Corporation Act) in 2001, so that this bill conforms Chapter 55A to Chapter 55 in this regard. The legislative staff summary for the part of the 2001 bill that made the amendments to Chapter 55 described the changes as "conforming changes for corporations to operate under the Uniform Electronic Transactions Act." The changes would allow a nonprofit corporation to send notices and to conduct votes of its members in a more efficient and cost-effective manner.

Specific Comments

Section 1 amends G.S. 55A-1-40 (Chapter definitions) to add three new definitions, "electronic," "electronic record," and "electronic signature," which are defined to be the same as the definitions of these terms in Article 40 of Chapter 66 of the General Statutes (Uniform Electronic Transactions Act). The section also amends the definition of "vote" to expressly include electronic ballots and electronic consents.

Section 2 amends G.S. 55A-1-41 (Notice) in three places. In subsection (b), the list of various methods of electronic communication (some now old-fashioned) is replaced with the term, "electronic means" ("electronic" being a newly-defined term). In subsection (c), which currently adopts the "mailbox rule" for paper notices sent by U.S. mail (effective when mailed, whether or not actually received), the amendment specifies that the nonprofit corporation and its member may agree to adopt the electronic equivalent of the "mailbox rule" for electronically transmitted notices and that the member may later terminate the agreement on a prospective basis. In subsection (e), a sentence is added providing that the time of receipt of an electronic notice is determined under G.S. 66-325 (in summary, when a message enters the recipient's processing system in a form capable of being processed by that system).

Section 3 adds a new Part 7 (Miscellaneous) to Article 1 of Chapter 55A, containing one new General Statutes section, G.S. 55A-1-70 (Electronic transactions). This new section

provides that for purposes of applying the Uniform Electronic Transactions Act (Article 40 of Chapter 66), a corporation may agree to conduct a transaction by electronic means in its articles of incorporation or bylaws or by action of its board of directors.

Section 4 amends G.S. 55A-7-04 (Action by written consent) in subsection (a) to allow a member to consent electronically to action taken without a meeting if the corporation has agreed as provided in (new) G.S. 55A-1-70.

Section 5 amends G.S. 55A-7-08 (Action by written ballot) in subsection (a) to expressly allow electronically transmitted ballots as long as the transmission includes information showing that the member authorized the electronic transmission.

Section 6 amends G.S. 55A-7-24 (Proxies) in subsection (a) to update the terminology and conform it more closely to the equivalent provisions of G.S. 55-7-22 (Proxies). G.S. 55A-7-24(a) currently allows a proxy to be a photocopy, telegram, cablegram, facsimile transmission, "equivalent reproduction of a writing," or an e-mail if permitted by the corporation. The statute also currently has a catch-all provision, subject to permission by the corporation, for any kind of electronic or telephonic transmission, even without a writing, if the corporation can tell that the member authorized the proxy. The amendment substitutes for the current lists language using the new defined term "electronic record." The amended language also requires that all proxies in the form of an electronic record have the member's electronic signature (also a new defined term) and be reproducible in paper form. The existing catch-all accordingly becomes limited to telephone transmissions only.

Section 7 amends G.S. 55A-8-21 (Action without meeting) in subsection (a) to allow a director to consent electronically to action taken without a meeting if the corporation has agreed as provided in (new) G.S. 55A-1-70. This amendment parallels the amendment in Section 4 to G.S. 55A-7-04 on members' consents to action taken without meeting.

Section 8 provides an effective date of October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1851*

Short Title:	Service of Process/Electronic or Fax Receipt.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j), reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in ~~subsection~~ subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the

addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. ~~Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served.~~

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent

appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee,

and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested,

addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to

be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – ~~Service upon~~Upon a foreign state or a political subdivision, agency, or instrumentality ~~thereof shall be effected~~thereof, pursuant to 28 U.S.C. § 1608."

SECTION 2. G.S. 1A-1, Rule 4(j2), reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of ~~G.S. 1-75.10(1).~~G.S. 1-75.10(a)(1).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service

by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or 1-75.10(6),~~G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return ~~or delivery receipt or~~ receipt, copy of the proof of delivery provided by the United States Postal ~~Service~~ Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

SECTION 3. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served."

SECTION 4. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

...

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party ~~averring:~~averring all of the following:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt ~~requested;~~requested.

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the ~~addressee; and~~addressee.

c. That the ~~genuine~~ delivery receipt or other evidence of delivery is attached.

....

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt."

SECTION 5. G.S. 1A-1, Rule 4(j1), reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of ~~G.S. 1-75.10(2),~~G.S. 1-75.10(a)(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:
Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)
_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1851*
PROPOSED COMMITTEE SUBSTITUTE S1851-CSRI-37 [v.2]

6/2/2008 2:15:59 PM

Short Title: Service of Process/Electronic or Fax Receipt. (Public)

Sponsors:

Referred to:

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j), reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in ~~subsection~~ subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and

complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. ~~Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served.~~

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. §

7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North

Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and

complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – ~~Service upon~~Upon a foreign state or a political subdivision, agency, or instrumentality ~~thereof shall be effected~~thereof, pursuant to 28 U.S.C. § 1608."

SECTION 2. G.S. 1A-1, Rule 4(j2), reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of ~~G.S. 1-75.10(1).~~G.S. 1-75.10(a)(1).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or 1-75.10(6),~~G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return ~~or delivery receipt or~~ receipt, copy of the proof of delivery provided by the United States Postal ~~Service~~ Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

SECTION 3. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served."

SECTION 4. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

...

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party ~~averring:~~averring all of the following:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt ~~requested;~~requested.

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the ~~addressee; and~~addressee.

c. That the ~~genuine~~ delivery receipt or other evidence of delivery is attached.

....

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt."

SECTION 5. G.S. 1A-1, Rule 4(j1), reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of ~~G.S. 1-75.10(2),~~G.S. 1-75.10(a)(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:
Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)

_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to receipts given on or after that date.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 4, 2008

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **SB 1851 (Service of Process/Electronic or Fax Receipt) (PCS)**

General Comments

This bill amends Rule 4(j) of the Rules of Civil Procedure to expressly recognize the use of electronic or facsimile proof of delivery receipts when service of process is provided by designated delivery services, i.e., FedEx, UPS, and DHL. The bill makes technical and minor stylistic changes to Rule 4(j) and eliminates an ambiguity in Rule 4(j2)(2). Finally, the bill makes stylistic and conforming changes to G.S. 1-75.10 relating to proof of service of process.

Designated delivery services use electronic receipts, similar to the proof of delivery used in the U.S. Postal Service's signature confirmation service, or provide the sender with a facsimile receipt. The statutes currently allow a copy of the U.S. Postal Service's signature confirmation to be used for proof of delivery. This bill resulted from a report by a litigator who used a designated delivery service for service of process, as allowed by Rule 4, but then had a clerk of court reject a copy of the electronic receipt as proof of delivery.

Specific Comments

Section 1 amends G.S. 1A-1, Rule 4(j) to define "delivery receipt" in the context of a designated delivery service to include an electronic or facsimile receipt. Section 1 also makes technical and minor stylistic changes in Rule 4(j)(1) and Rule 4(j)(9). Sections 1 and 3 together eliminate any implication that the amendments in this bill authorize service of process by e-mail by moving the current prohibition against the use of electronic mailing for service of process from sub-subdivision (j)(1)e., relating to service of process by signature confirmation, to a new subsection (j6).

Section 2 amends G.S. 1A-1, Rule 4(j2)(2) to eliminate an ambiguity in the second sentence of the subdivision by clarifying that the language "provided by the United States Postal Service" does not modify "delivery" receipt and to expressly provide that the term "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service. Section 2 also updates cross references to G.S. 1-75.10 as amended by Section 4.

Section 4 amends G.S. 1-75.10 to authorize the use of a facsimile delivery receipt or a printout of an electronic delivery receipt in proving service of process by a designated delivery service and makes minor stylistic changes, and Section 5 amends G.S. 1A-1, Rule 4(j1) to make a conforming cross reference to G.S. 1-75.10 as amended by Section 4.

Section 6 makes the bill effective October 1, 2008, applicable to receipts given on or after that date.

SENATE BILL 1860*

Short Title:	Amend Child Abuse/Child Fatality Task Force.	(Public)
Sponsors:	Senators Allran; Atwater, Berger of Rockingham, Brown, Dorsett, Forrester, Hartsell, Hunt, Jacumin, Nesbitt, Purcell, Rand, and Snow.	
Referred to:	Judiciary II (Criminal).	

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR MISDEMEANOR CHILD ABUSE AND TO AMEND THE CRIMINAL OFFENSE OF FELONY CHILD ABUSE AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.2 reads as rewritten:

"**§ 14-318.2. Child abuse a Class 1 misdemeanor.**

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the ~~Class 1~~Class A1 misdemeanor of child abuse.

(b) The ~~Class 1~~ Class A1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

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

SECTION 2. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of

prostitution with or by the ~~juvenile~~ child is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon ~~a juvenile~~ the child is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony. ~~"Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.~~

(a4) A parent or any other person providing care to or supervision of a child whose willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child whose willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class G felony if the act or omission results in serious physical injury to the child.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

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

(d) The following definitions apply in this section:

(1) Serious bodily injury. – Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. 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.

SENATE BILL 1860:
Amend Child Abuse/Child Fatality Task Force

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 3, 2008
Introduced by:	Sen. Allran	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1860 would increase the penalty for misdemeanor child abuse and would establish two new felony child abuse offenses for certain acts or omissions that result in the injury of a child. Senate Bill 1860 is a recommendation of the Child Fatality Task Force.

[As introduced, this bill is identical to S1816, as introduced by Senator Boseman, which is currently in Senate Judiciary I, and H2339, as introduced by Representatives Weiss and Clary, which is currently in House Children, Youth, and Families.]

CURRENT LAW: The General Statutes provide for several levels of criminal offenses for child abuse. The chart below describes the existing non-sexual child abuse offenses and the corresponding penalties.

General Statute Citation	Age of Victim	Relationship of Defendant to Victim	Type of Harm to Victim	Level of Penalty*
G.S. 14-318.2(a)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	By other than accidental means: • Inflicts physical injury • Allows physical injury to be inflicted • Creates or allows to be created a substantial risk of physical injury	Class 1 misdemeanor
G.S.14-318.4(a)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	• Intentionally inflicts serious physical injury • Intentionally commits an assault that results in serious physical injury	Class E felony
G.S. 14-318.4(a3)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	• Intentionally inflicts any serious bodily injury • Intentionally commits an assault that results in any serious bodily injury or results in permanent or protracted loss or impairment of any mental or emotional function	Class C felony

* See next page for presumptive ranges of punishment for each class of penalty

BILL ANALYSIS: Senate Bill 1860 would increase the penalty for misdemeanor child abuse from a Class 1 misdemeanor to a Class A1 misdemeanor.

Senate Bill 1860 would also create the following two new criminal offenses:

General Statute Citation	Age of Victim	Relationship of Defendant to Victim	Type of Harm to Victim	Level of Penalty
G.S. 14-318.4(a4)	Child (Does not specify age)	Parent or other person providing care to or supervision of the child	Willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life that results in serious bodily injury to the child	Class E felony
G.S. 14-318.4(a5)	Child (Does not specify age)	Parent or other person providing care to or supervision of the child	Willful act or omission in the care of the child is so gross, wanton, and culpable as to show reckless disregard for human life that results in serious physical injury to the child	Class G felony

Under current law and Senate Bill 1860, "serious bodily injury" is defined as bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Senate Bill 1860 would define "serious physical injury" as physical injury that causes great pain and suffering and would include serious mental injury.

EFFECTIVE DATE: Senate Bill 1860 would become effective December 1, 2008, and apply to offenses committed on or after that date. The changes to the child abuse statutes would not affect prosecutions for offenses committed before December 1, 2008.

PRESUMPTIVE RANGES OF PUNISHMENT (assuming no prior convictions):

Level of Penalty	Presumptive Range of Punishment
Class C felony	58 to 97 months of active punishment
Class E felony	20 to 39 months of intermediate or active punishment
Class G felony	10 to 16 months of intermediate or active punishment
Class A1 misdemeanor	1 to 60 days of community, intermediate, or active punishment
Class 1 misdemeanor	1 to 45 days of community punishment

Erika Churchill, Committee Counsel to the Senate Judiciary I Committee, substantially contributed to this summary.

S1860e1-SMSB

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1860*

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

S1860-ASB-28 [v.1]

Date ~~6-3-2008~~ ~~6/3/2008~~ 6-5-2008

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

Senator Allran

moves to amend the bill on page 2, lines 15 and 19,
by adding after the word "child" the words "less than 16 years of age".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 10, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 2189	DV Victim Assistance.	Representative Ross Representative Pierce Representative Farmer-Butterfield Representative McLawhorn
SB 1988	Unlawful to Burn Cross/Hang Noose.	Senator Berger

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 10, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 2189	DV Victim Assistance.	Representative Ross Representative Pierce Representative Farmer-Butterfield Representative McLawhorn
SB 1988	Unlawful to Burn Cross/Hang Noose.	Senator Berger

Presentations

Other Business

Adjournment

Senate Judiciary II Committee

Minutes

June 10, 2008

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 10, 2008, with twelve members present. He then noted that there were no pages at today's meeting.

Senator Hartsell explained that House Bill 545 would not be heard at this meeting but would be calendered for another time.

HB 2189 (DV Victim Assistance.) Representative McLawhorn was recognized to explain the bill. After her explanation, she answered Senator Jones' question. Senator Jacumin moved for a favorable report. All voted and the motion carried.

SB 1988 (Unlawful to Burn Cross/Hang Noose.) Senator Hartsell asked for a motion to adopt the Proposed Committee Substitute for purposes of discussion. Senator Snow so moved, all voted and the motion carried. Senator Berger was recognized to explain the Proposed Committee Substitute. Questions from Senators East, Goodall, Atwater and Jacumin were answered by Senator Berger and Mr. Ben Popkin, Staff Attorney, who gave additional explanation of the bill. Ms. Amina Turner and Reverend William Barber, both representing the NAACP, and Mr. Gene Troy, representing the North Carolina Human Relations Committee, spoke in favor of the bill. Ms. Janice MacKay, of Wake County District 15, spoke in opposition. Senator Bingham, moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill, with a serial referral to Appropriations. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 10, 2008

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

FAVORABLE

H.B. **2189** DV Victim Assistance.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, June 11, 2008

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

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

S.B. **1988** Unlawful to Burn Cross/Hang Noose.

Draft Number:	55737
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 10, 2008
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Troy, Jr.	N.C. Human Relations Commission 1318 Mail Service Center Ral, NC 27699-1318
Amina J. Turner	NC NAACP 114 W Parrish, Durham 27701
Richard S. Bonlden	NC Human Relations Comm.
Janice MacKay	Wake County Senate District 15
Kelly McCullen & Mark Stroupe	UNC-TV
Colleen Kochanek	Smith Moore
John Phelps	NCLM
ROBERT ZIMMERS-	WCBOA
John McKee	GOO Office
Tyler Mulhiga	UNC SOG
Christine Wunsche	SOG - Daily Bulletin

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	NC Sentencing Commission
David Lagos	Sentencing Commission
Jami Fitzgerald	NCFPC
Al Ripley	NC Justice Ctr
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
[signature]	TPG
Emily Williams	The Policy Group
Rev. Mark Creech	CAL

H 1

HOUSE BILL 545*

Short Title: General Statutes Comm. Technical Corrections. (Public)

Sponsors: Representatives Ross; and Bell.

Referred to: Judiciary I.

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-142.1(i) reads as rewritten:

"(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~the~~ individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10."

SECTION 2. G.S. 110-142.1(l) reads as rewritten:

"(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or ~~reimbursement~~ reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying

that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section."

SECTION 3. G.S. 70-27(b) reads as rewritten:

"(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to ~~G.S. 130-198~~ G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information."

SECTION 4. G.S. 70-30 reads as rewritten:

"**§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of ~~G.S. 130-198.~~ G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner."

SECTION 5. G.S. 70-39 reads as rewritten:

"**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of ~~G.S. 130-198~~ G.S. 130A-383 are not subject to the prohibitions contained in this Article."

SECTION 6. G.S. 152-7(6) reads as rewritten:

"**§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.**

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

...

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in ~~G.S. 130-98~~ G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

...."

SECTION 7. G.S. 140-5.17 is repealed.

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 2189*

Short Title:	DV Victim Assistance.	(Public)
Sponsors:	Representatives McLawhorn, Ross, Farmer-Butterfield, Pierce (Primary Sponsors); Alexander, Bryant, Church, Cotham, Dickson, England, Faison, Fisher, Glazier, Goodwin, Gulley, Harrison, Insko, Johnson, Lucas, Luebke, Ray, Underhill, Wainwright, Walend, E. Warren, R. Warren, Weiss, and Williams.	
Referred to:	Judiciary III.	

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE DOMESTIC VIOLENCE VICTIMS WITH INFORMATION AND ASSISTANCE AND TO STUDY A STATEWIDE AUTOMATED NOTIFICATION SYSTEM FOR PERSONS WITH DOMESTIC VIOLENCE PROTECTIVE ORDERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-831 reads as rewritten:

"**§ 15A-831. Responsibilities of law enforcement agency.**

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(7) The informational sheet described in G.S. 50B-3(c1), if there was a personal relationship, as defined in G.S. 50B-1(b), with the accused.

(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the defendant's name and the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency on the status of the accused during the pretrial process. If the victim elects to receive further notices during the pretrial process, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number."

SECTION 2. The North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence, the North Carolina Attorney General's Office, and the Governor's Crime Commission, shall study the adoption of a statewide automated victim notification system for persons who have received a protective order under Chapter 50B of the General Statutes. As part of its study of this issue, the Domestic Violence Commission shall review:

(1) Automated notification systems used in other state jurisdictions to notify protective order holders of critical dates, e.g., the date the respondent, if incarcerated, will be released from custody.

(2) Data, if any, on the effectiveness of other state systems.

(3) The current statewide system which provides automated notice to crime victims (SAVAN), to determine if it could be enhanced to include the proposed system.

(4) Sources of grant funding that are available to implement the system.

(5) Methods utilized for registering into the system, and whether the information should be accessible to the general public, in addition to the person or persons protected by the order.

(6) Methods to ensure that information relating to the respondent of an order is uploaded in a timely manner and to confirm that notification has been sent to registrants.

The North Carolina Domestic Violence Commission shall report with the results of its study, and any recommendations, to the Joint Legislative Committee on Domestic Violence and the General Assembly on or before January 1, 2009.

SECTION 3. This act becomes effective July 1, 2008.

HOUSE BILL 2189:
DV Victim Assistance

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 10, 2008
Introduced by:	Representatives McLawhorn, Ross, Farmer-Butterfield, and Pierce	**Summary by:**	Jeff Hudson Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 2189 would provide that under certain circumstances, law enforcement agencies would provide domestic violence assistance information to victims of domestic violence. House Bill 2189 would also direct the North Carolina Domestic Violence Commission to study the adoption of a statewide automated victim notification system for persons who have received a domestic violence protective order.***

[As introduced, this bill was identical to S1586, as introduced by Sen. Boseman. S1586 has been filed, but has not been referred to a Committee]

BACKGROUND: House Bill 2189 is a recommendation of the Joint Legislative Committee on Domestic Violence.

CURRENT LAW: G.S. 15A-831 requires a law enforcement agency to provide certain crime victims with the following information within 72 hours of identifying the victim:

- The availability of medical services.
- The availability of crime victims' compensation funds and the address and telephone number of the agency responsible for dispensing the funds.
- The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.
- The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.
- Information about an accused's opportunity for pretrial release.
- The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

G.S. 50B-3 (c1) requires the Clerk of Superior Court to provide an informational sheet that includes the following information to the applicant for a protective order upon issuance of the protective order:

- Domestic violence agencies and services.
- Sexual assault agencies and services.
- Victims' compensation services.
- Legal aid services.
- Address confidentiality services.
- An explanation of the plaintiff's right to apply for a concealed handgun permit.

BILL ANALYSIS: House Bill 2189 would require a law enforcement agency to provide the domestic violence assistance information sheet described in G.S. 50B-3(c1) to a victim under G.S. 15A-831 if the agency determines that there was a personal relationship between the victim and the accused. "Personal relationship" is a relationship where the parties:

- Are current or former spouses.
- Are persons of opposite sex who live together or have lived together.
- Are related as parents and children, including others acting as a parent to a minor child, or as grandparents and grandchildren.
- Have a child in common.
- Are current or former household members.
- Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship.

House Bill 2189 would also direct the North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence, the North Carolina Attorney General's Office, and the Governor's Crime Commission, to study the adoption of a statewide automated victim notification system for persons who have received a domestic violence protective order. The North Carolina Domestic Violence Commission will report the results of its study and any recommendations to the Joint Legislative Committee on Domestic Violence and the General Assembly on or before January 1, 2009.

EFFECTIVE DATE: This act becomes effective July 1, 2008.

H2189e1-SMSB

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1988

Short Title:	Unlawful to Burn Cross/Hang Noose.	(Public)
Sponsors:	Senators Berger of Franklin; Albertson, Bingham, Boseman, Cowell, Dalton, Dannelly, Dorsett, East, Foriest, Graham, Hartsell, Hoyle, Jenkins, Jones, Kinnaird, Malone, McKissick, Nesbitt, Purcell, Shaw, Snow, Swindell, and Weinstein.	
Referred to:	Judiciary II (Criminal).	

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO BURN A CROSS OR HANG A NOOSE FOR THE INTENT OF INTIMIDATING ANOTHER PERSON BECAUSE OF RACE, COLOR, RELIGION, NATIONALITY, OR COUNTRY OF ORIGIN AND TO STUDY THE IMPACT OF RECENT CROSS BURNINGS AND NOOSE HANGINGS ACROSS THE STATE TO MAKE RECOMMENDATIONS FOR MODIFICATION TO THE CRIMINAL LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

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

"**§ 14-401.14A. Unlawful to burn a cross or hang a noose with the intent to intimidate.**

If a person shall burn a cross or hang a noose with the intent to intimidate another because of race, color, religion, nationality, or country of origin, he shall be guilty of a Class H felony."

SECTION 2. The Legislative Research Commission shall study the impact of recent cross burnings and noose hangings within the State and determine if any modifications should be made to existing statutes to lawfully deter this type of conduct. Of funds appropriated to the General Assembly for the 2008-2009 fiscal year, there shall be allocated the sum of twenty thousand dollars ($20,000) to fund this study. The Legislative Research Commission shall report its findings and make recommendations for legislation to the 2009 Session of the General Assembly.

SECTION 3. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1988
PROPOSED COMMITTEE SUBSTITUTE S1988-CSRD-51 [v.1]

6/9/2008 2:27:39 PM

Short Title: Unlawful to Burn Cross/Hang Noose. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO BURN A CROSS OR HANG A NOOSE FOR THE INTENT OF INTIMIDATING ANOTHER PERSON BECAUSE OF RACE, COLOR, RELIGION, NATIONALITY, OR COUNTRY OF ORIGIN AND TO STUDY THE IMPACT OF RECENT CROSS BURNINGS AND NOOSE HANGINGS ACROSS THE STATE TO MAKE RECOMMENDATIONS FOR MODIFICATION TO THE CRIMINAL LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

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

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If a person shall burn a cross or hang a noose with the intent to intimidate another because of race, color, religion, nationality, or country of origin, he shall be guilty of a Class H felony."

SECTION 2. The Legislative Research Commission shall study the impact of recent cross burnings and noose hangings within the State and determine if any modifications should be made to existing statutes to lawfully deter this type of conduct. Of funds appropriated to the General Assembly for the 2008-2009 fiscal year, there shall be allocated the sum of twenty thousand dollars ($20,000) to fund this study. The Legislative Research Commission shall report its findings and make recommendations for legislation to the 2009 Session of the General Assembly.

SECTION 3. Section 1 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 1988:
Unlawful to Burn Cross/Hang Noose

BILL ANALYSIS

Committee:	Senate Ref to Judiciary II (Criminal). If fav, re-ref to Appropriations/Base Budget	**Date:**	June 9, 2008
Introduced by:	Sen. Berger of Franklin	**Summary by:**	Ben Popkin
Version:	PCS to First Edition S1988-CSRD		Committee Counsel

SUMMARY: ***Senate Bill 1988 would create a new Class H felony offense for burning a cross or hanging a noose for the purpose of intimidating another because of their race, color, nationality, or country of origin. The bill would also direct the Legislative Research Commission to study recent incidences of cross burning or noose hanging in the State to determine if modifications to existing statutes should be enacted to deter future such incidents. The Proposed Committee Substitute would modify the effective date section to allow the study to be funded and conducted before the criminal offense created in Section 1 of the bill becomes effective.***

CURRENT LAW: There is no current law specifically prohibiting cross burning or noose hanging, though, depending on the specific facts of the incident, these actions may fall within the reach of the existing ethnic intimidation statute or other criminal offenses.

General Statute 14-401.14 "Ethnic Intimidation; teaching any technique to be used for ethnic intimidation" makes it a Class 1 misdemeanor offense for a person to assault another or to damage or deface their property (or threaten to do so) because of that person's race, color, religion, nationality or country of origin. The statute also makes it a Class 1 misdemeanor offense to "assemble" with another person to, "...teach any technique or means to be used to commit any act in violation..." of the provisions of the statute.

Assuming the offender has no prior convictions, a Class 1 misdemeanor is punishable by 1-45 days community punishment. The disposition may include probation, community service, restitution and/or fines. The amount of the fine for a Class 1 misdemeanor is set at the discretion of the court.

BILL ANALYSIS: Section 1 of Senate Bill 1988 would create a new Class H felony offense for burning a cross or hanging a noose for the purpose of intimidating another because of their race, color, nationality, or country of origin.

Assuming no prior convictions, the presumptive minimum sentence for a Class H felony is 5-6 months of either community, intermediate or active punishment. The disposition may range from probation, community service, restitution and/or fines to incarceration. The amount of the fine would be in the discretion of the court.

Section 2 of Senate Bill 1988 would direct the Legislative Research Commission to study the impact of recent cross burnings and noose hangings in the State, determine if modifications to existing laws are warranted to deter this type of conduct, and report its findings and recommendations to the 2009 session of the General Assembly. This section also directs that $20,000 of funds already appropriated to the General Assembly be allocated to fund this study.

EFFECTIVE DATE: Section 1 of the bill would become effective December 1, 2008 and apply to offenses committed on or after that date. Sections 2 and 3 would be effective when it becomes law.

S1988e1-SMRD-CSRD

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 12, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
SB 1651	Anatomical Gifts.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 12, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
SB 1651	Anatomical Gifts.	Senator Hartsell

Presentations

Other Business

Adjournment

Senate Judiciary II Committee

Minutes

June 12, 2008

Senator Fletcher Hartsell, Chairman, called the Senate Judiciary II Committee to order on June 12, 2008, with eleven members present. Senator Hartsell introduced pages Davette McLaurin, Candice Kirk, Camilla Bethel, Jasmine Kirk, Derrick Zorman and Carolina Dunn and thanked them for their service.

HB 545 (General Statutes Comm. Technical Corrections.) Senator Hartsell asked for a motion to adopt the Proposed Committee Substitute for purposes of discussion. Senator Atwater so moved, all voted and the motion carried. Representative Ross was recognized to explain the bill. Questions from Senators East and Kerr were answered by Senator Hartsell. Senator Snow moved for a favorable report for the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 1651 (Anatomical Gifts.) Senator Berger presided, as this was Senator Hartsell's bill. Senator Snow moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill. Mr. Ben Popkin, Staff Attorney, and Mr. Floyd Lewis, representing the General Statutes Commission, gave additional explanation. Representative Folwell spoke in support of the bill. Senator Bingham offered an amendment which was explained by Representative Folwell. Mr. Barry Porter, representing the American Red Cross, and Mr. Hugh Tilson, of the Hospital Association spoke in favor of the amendment. Representative Folwell answered Senator Jones' question. Senator Jacumin moved to adopt the amendment. All voted and the motion carried. Senator Snow moved to accept the Proposed Committee Substitute, as amended, unfavorable to the original bill, and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 16, 2008

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

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

S.B. **1651** Anatomical Gifts.

Draft Number:	15301
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-12-08

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY AND ADDRESS
1	BOB KUCAB	NCHFA
2	Margaret Matarese	NC HFA
3	Haley Haynes	SOS
4	Ellen Greeson	UNC School of Government
5	Christine Wunsche	SOG- Daily Bulletin
6	John McKay	GOO office
7	P. Jay Hall	General Statutes Commission
8	David Anders	PTFPNC
9	Kim Ward	NCBA
10	Floyd Lewis	General Statutes Commission
11	[illegible]	SOS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-12-08

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY AND ADDRESS
1	Jon Carr	Jordan Price Law Firm
2	Doug Heron	Williams Mullen
3	Zeb Alley	NCMA+S
4	Amy McConkey	SA
5	Barry Porter	American Red Cross
6	David Barnes	Poyner Spruill
7	Chip Beck	NCMS
8	Bill Scogen	NCAA
9	Jim Blackburn	NC Association of County Commissioners
10	Tamara Jones	NCHFA
11	Hugh Tilson	NCHFA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Carbe	Charlotte

H 1

HOUSE BILL 545*

Short Title: General Statutes Comm. Technical Corrections. (Public)

Sponsors: Representatives Ross; and Bell.

Referred to: Judiciary I.

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-142.1(i) reads as rewritten:

"(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~the~~ individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10."

SECTION 2. G.S. 110-142.1(l) reads as rewritten:

"(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or ~~reimbursement~~ reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying

that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section."

SECTION 3. G.S. 70-27(b) reads as rewritten:

"(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to ~~G.S. 130-198~~ G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information."

SECTION 4. G.S. 70-30 reads as rewritten:

"**§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of ~~G.S. 130-198.~~ G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner."

SECTION 5. G.S. 70-39 reads as rewritten:

"**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of ~~G.S. 130-198~~ G.S. 130A-383 are not subject to the prohibitions contained in this Article."

SECTION 6. G.S. 152-7(6) reads as rewritten:

"**§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.**

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

...

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in ~~G.S. 130-98~~ G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

...."

SECTION 7. G.S. 140-5.17 is repealed.

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 545*
PROPOSED SENATE COMMITTEE SUBSTITUTE H545-CSRI-39 [v.8]

6/11/2008 12:47:51 PM

Short Title: Clarify and amend various provisions. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO: (1) PROVIDE THE HOUSING FINANCE AGENCY TWO ADDITIONAL POWERS CONCERNING REAL PROPERTY AND SERVICES RETAINED FOR ISSUANCE OF BONDS; (2) AUTHORIZE A ONE-TIME BULK UPDATE OF REGISTERED AGENT INFORMATION; (3) AMEND THE LIST OF ENTITIES INCLUDED AS "ESTABLISHED LEGAL SERVICES PROGRAMS" TO WHICH THE NORTH CAROLINA STATE BAR MAY ALLOCATE FUNDS UNDER THE ACCESS TO CIVIL JUSTICE ACT AND THE DOMESTIC VIOLENCE ASSISTANCE ACT; (4) VALIDATE CERTAIN NOTARIAL ACTS FILED IN THE MECKLENBURG COUNTY REGISTER OF DEEDS OFFICE; AND (5) VALIDATE CERTAIN NOTARIAL ACTS PERFORMED ON OR BEFORE MAY 1, 2008.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 122A-5 reads as rewritten:

"**§ 122A-5. General powers.**

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

...

(25) To participate in and administer federal housing programs, including housing rehabilitation, construction of new housing, assistance to the homeless, and home ownership ~~assistance.~~assistance;

(26) To acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The Board of Directors may pledge or encumber income and assets of the Agency to secure financing for real property;

(27) To select and retain, subject to the approval of the Local Government Commission, the financial consultants, underwriters, and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed."

SECTION 1.(b) G.S. 122A-8.1 is repealed.

SECTION 2.(a) The following definitions apply in this section:

(a) Department. – The Department of the Secretary of State.

(b) Filer. – One of the following corporations on file with the Department:

(1) C.T. Corporation System

(2) Business Filings International, Inc.

(3) Business Filings Incorporated.

(c) Notice. – A bulk filing which includes the information required in G.S. 55D-31(a)(2) through (6) and a certification that the filer has complied with the entity notification requirements of G.S. 55D-31(b). For a notice intended to update information for unincorporated nonprofit associations, "notice" shall also mean a filing which includes the information required by G.S. 59B-11(b)(4). Any notice filed must include a written statement that the notice is filed pursuant to this section.

SECTION 2.(b) Upon receipt and filing by the Department, a notice pursuant to this section shall be sufficient as a matter of law under G.S. 55D-31 and G.S. 59B-11 to update registered office and registered agent information for each entity on file with the Department for which the filer is listed on the records of the Department as the registered office, the registered agent, or both.

SECTION 2.(c) The requirements of G.S. 55D-13(a) and (b), G.S. 55D-10(b)(8), G.S. 55-1-22(a), G.S. 55A-1-22(a), G.S. 57C-1-22(a), G.S. 59-35.2(a), G.S. 59-1106(a), and G.S. 59B-11(f) shall not apply to notices filed pursuant to this section.

SECTION 2.(d) This section shall only apply to one notice for each filer.

SECTION 2.(e) Unless otherwise specified, the change of address shall become effective on the 45th day following the Department's receipt of a notice filed pursuant to this section. A filer may specify in the notice a later effective date for the change of address, but not an earlier effective date.

SECTION 2.(f) A notice filed pursuant to this section shall be delivered to the Department no later than one year after the effective date of this section.

SECTION 3.(a) G.S. 7A-474.2 reads as rewritten:

"**§ 7A-474.2. Definitions.**

The following definitions shall apply throughout this Article, unless the context otherwise requires:

...

(1a) "Established legal services programs" means the following not-for-profit corporations using State funds to serve the counties listed: Legal Services of the Southern Piedmont, serving Cabarrus, Gaston, Mecklenburg, Stanly, and Union Counties; ~~Legal Aid Society~~

~~of Northwest North Carolina, serving Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties;~~ Pisgah Legal Services, serving Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; and Legal Aid of North Carolina, a statewide program; or any successor entity or entities of the named organizations, or, should any of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area.

..."

SECTION 3.(b) G.S. 7A-474.4 reads as rewritten:

"**§ 7A-474.4. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs based upon the eligible client population in each area, with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; ~~Legal Aid Society of Northwest North Carolina receiving half of the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties;~~ and Legal Services of Southern Piedmont receiving half of the allocation for Cabarrus, Gaston, Mecklenburg, Stanly, and Union Counties. The North Carolina State Bar shall not use any of these funds for its administrative costs."

SECTION 3.(c) G.S. 7A-474.17 reads as rewritten:

"**§ 7A-474.17. Definitions.**

The following definitions shall apply throughout this Article, unless the context otherwise requires:

...

(3) "Established legal services program" means the following not-for-profit corporations using State funds to serve the counties listed: ~~Legal Aid Society of Northwest North Carolina, serving Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties;~~ Pisgah Legal Services, serving Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; and Legal Aid of North Carolina; or any successor entity or entities of the named organizations, or, should any of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area."

SECTION 3.(d) G.S. 7A-474.19 reads as rewritten:

"**§ 7A-474.19. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania ~~Counties, and Legal Aid Society of Northwest North Carolina~~

~~receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties.~~Counties. Funds shall be allocated to each program based on the counties served by that program using the following formula:

(1) Twenty percent (20%) based on a fixed equal dollar amount for each county.

(2) Eighty percent (80%) based on the rate of civil actions filed pursuant to Chapter 50B of the General Statutes in that county.

The North Carolina State Bar shall not use any of these funds for its administrative costs."

SECTION 4. G.S. 10B-70 reads as rewritten:

"**§ 10B-70. Certain notarial acts for local government agencies validated.**

(a) Any acknowledgment taken and any instrument notarized for a local government agency by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, by a person whose notary commission has expired, or by a person who failed to qualify within 45 days of commissioning as required by G.S. 10B-10, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed for a local government agency on or after October 31, 2006, and before June 30, 2007.

(b) Any electronic document filed in the Mecklenburg County Register of Deeds office that purports to be notarized in the Commonwealth of Virginia and that contains the typed name of a Virginia notary together with the notary's expiration date shall be given the same legal effect as if the person performed a lawful notarization in Virginia."

SECTION 5. G.S. 10B-65 reads as rewritten:

"**§ 10B-65. Acts of notaries public in certain instances validated.**

...

(e) This section applies to notarial acts performed on or before ~~February 1, 2004.~~May 1, 2008."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 545:
Clarify and amend certain provisions.

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 12, 2008
Introduced by:	Rep. Ross	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to First Edition H545-CSRI-39 [v.8]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 545 would: (1) give the Housing Finance Agency two additional powers concerning real property and services retained for issuance of bonds; and (2) authorize a one-time bulk update of registered agent information on file with the Department of the Secretary of State; (3) amend the list of entities included as "established legal services programs" to which the North Carolina State Bar may allocate funds under the Access to Civil Justice Act and the Domestic Violence Assistance Act; and (4) validate certain notarial acts.***

[As introduced, this bill was identical to S613, as introduced by Sen. Hartsell, which is currently in House Judiciary I.]

BILL ANALYSIS:

Section 1 of the PCS would repeal G.S. 122A-8.1 and give the Housing Finance Agency (HFA) two additional powers:

- **Concerning real property**: The power to deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The PCS authorizes the FHA's Board of Directors to pledge or encumber income and assets of the FHA to secure financing for real property.

  Background: With regard to the power to deal with real property, similar power is given elsewhere in the General Statues to the following entities: the North Carolina State Bar; the Auctioneers Commission; the Licensing Board for General Contractors; the Board of Examiners for Engineers and Surveyors; and the Medical Board; Board of Nursing.

- **Concerning services retained for bond issuance**: The power to select, retain, subject to the approval of the Local Government Commission, consultants, underwriters, and attorneys for the issuance of bonds. The PCS also authorizes the payment of these individuals from the proceeds of the bond issuance for which their services were performed.

  Background: Similar power is given elsewhere in the General Statues to the following entities: the State and local governments; the Medical Care Commission; a joint agency created pursuant to Ch. 159B (Joint Municipal Electric Power); an authority created pursuant to Ch. 159C (Industrial and Pollution Control); the Capital Facilities Finance Agency; and a regional sports authority created pursuant to Ch. 160A (Cities and Towns).

The PCS would repeal G.S. 122A-8.1 which gave the State Treasurer: (i) the power to issue bonds and notes authorized under the Housing Finance Act; (ii) the sole discretion to determine the interest rate, maturities, and other terms and conditions; and (iii) the power to employ and designate consultants, underwriters, and attorneys for the issuance of bonds.

Section 2 of the PCS would authorize a one-time bulk update of registered office and registered agent information on file with the Department of the Secretary of State.

Background: This provision was requested by Campbell University in order to facilitate a real estate transaction involving an office building in which registered agents currently lease office space. The transaction necessitates update of information on file with the Department of the Secretary of State. Under the General Statutes such an update of information would incur fees of approximately $150,000. The provision in the PCS would permit the update of this information without assessment of the fees.

Section 3 of the PCS would amend the list of entities included as "established legal services programs" to which the North Carolina State Bar may allocate funds under the Access to Civil Justice Act and the Domestic Violence Assistance Act.

Background: According to information provided by staff with the State Bar, currently both Acts refer to the Legal Aid Society of Northwest North Carolina (LASNNC) as a named "established legal services program" that should receive funding for serving particular counties. LASNNC has transferred staff, assets and programming to Legal Aid of North Carolina ((LANC) a State-wide legal services program referenced in the statute), and the State Bar is presently allocating the funds previously sent to LASNNC to LANC as an "entity ...providing substantially the same services in substantially the same service area." However, the LASNNC board has decided not to dissolve the corporate entity and to explore other possibilities for work the entity could do. The State Bar has therefore requested that LASNNC be removed from the statutes to avoid any possible confusion over how the State funds for legal aid should be allocated. LASNNC leadership agrees with this request.

Section 4 of the PCS would provide that electronic documents filed in the Mecklenburg County Register of Deeds office that purport to be notarized in the Commonwealth of Virginia and that contain the typed name of a Virginia notary together with the notary's expiration date shall be given the same legal effect as if the person performed a lawful notarization in Virginia.

Background: According to information provided by staff of the Department of the Secretary of State, it was recently discovered that Virginia has yet to authorize electronic notarization and it is the opinion of Virginia's commissioning authority that any purported electronic notarization performed in Virginia would not be a notarization at all. Approximately 60,000 electronic documents that purport to have electronic notarizations performed in Virginia, however, have been filed in the Mecklenburg County Register of Deeds office. The provision in the PCS would validate these notarial acts.

Section 5 of the PCS would amend G.S. 10B-65 to validate certain, otherwise invalid, notarial acts performed on or before **May 1, 2008**. The statute currently applies to notarial acts performed on or before February 1, 2004.

EFFECTIVE DATE: The PCS would be effective when it becomes law.

H0545e1-SMRI-CSRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1651*

Short Title: Anatomical Gifts. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II (Criminal).

May 20, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REVISED ANATOMICAL GIFT ACT AND OTHER SECTIONS OF THE GENERAL STATUTES FOR CONSISTENCY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-602 reads as rewritten:

"**§ 90-602. Routine search for donor ~~information.~~ information; notification of hospital; definitions as provided in the Revised Uniform Anatomical Gift Act.**

(a) ~~The following persons may make a reasonable search for a document of gift or other information identifying the bearer as an organ donor or as an individual who has refused to make an anatomical gift:~~

~~(1) A law enforcement officer, firefighter, paramedic, or other official emergency rescuer finding an individual who the searcher believes is near death; and~~

~~(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.~~

For the purposes of this section, the terms "anatomical gift," "document of gift," "donor," and "refusal" have the same meaning as in G.S. 130A-412.4.

(a1) The following persons may make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer,

(2) A firefighter,

(3) A paramedic, or

(4) Another official emergency rescuer finding the individual.

If a document of gift or a refusal is located by a search under this subsection and the individual or deceased individual to whom it relates is taken to a hospital, the person conducting the search shall send the document of gift or refusal to the hospital or cause it to be sent.

(a2) If a hospital has not been advised that an individual who the hospital reasonably believes is dead or near death is a donor or an individual who made a refusal, the hospital shall make a reasonable search for this information as soon as practical after the individual arrives at the hospital.

(b) Any law enforcement officer or other person listed in subsection ~~(a)~~ (a1) or (a2) of this section may conduct an administrative search of the accident-trauma victim's Division of Motor Vehicles driver record to ~~determine the individual's authorization for organ donation or refusal of organ donation.~~ ascertain whether the individual is a donor. If a document of gift or a refusal is located by a search under this subsection and the individual or deceased individual to whom it relates is taken to a hospital, the person conducting the search shall notify the hospital of the results or cause the hospital to be notified.

(c) A physical search pursuant to subsection ~~(a)~~(a1) or (a2) of this section may be conducted at or near the time of death or arrival at the hospital ~~admission~~ and shall be limited to those personal effects of the individual where a drivers license reasonably may be stored. Any information, document, tangible objects, or other items discovered during the search shall be used solely for the purpose of ascertaining the individual's identity, notifying the individual's next of kin, and determining whether the individual intends to make an anatomical gift, and in no event shall any such discovered material be admissible in any subsequent criminal or civil proceeding, unless obtained pursuant to a lawful search on other grounds.

(d) A hospital or other person with duties under this section is not subject to criminal or civil liability for failing to discharge those duties but may be subject to administrative sanctions.

(e) A person that acts under this section with due care, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding."

SECTION 2. G.S. 130A-412.14 reads as rewritten:

"**§ 130A-412.14. Search and notification.**

~~(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:~~

~~(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and~~

~~(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.~~

~~(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased~~

~~individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.~~

~~(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.~~

A search of an individual who is reasonably believed to be dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal, and, if applicable, notification of the hospital to which the individual is taken, shall be made as provided in G.S. 90-602."

SECTION 3. G.S. 130A-391 is repealed.

SECTION 4. G.S. 32A-15(d) reads as rewritten:

"(d) This Article is intended and shall be construed to be consistent with the provisions of ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes. In the event of a conflict between the provisions of this Article and ~~Part 3~~ Part 3A of Article 16 of Chapter 130A, the provisions of ~~Part 3~~ Part 3A of Article 16 of Chapter 130A control."

SECTION 5. G.S. 90-210.124(d) reads as rewritten:

"(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 6. G.S. 90-210.129(q) reads as rewritten:

"(q) Before the cremation of amputated body parts, the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances of the amputation. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This section does not apply to the disposition of body parts cremated pursuant to ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes."

SECTION 7. G.S. 130A-415(f) reads as rewritten:

"(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift pursuant to ~~Part 3~~ Part 3A of this Article."

SECTION 8. G.S. 130A-420(d) reads as rewritten:

"(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1651*
PROPOSED COMMITTEE SUBSTITUTE S1651-CSRD-54 [v.2]

6/11/2008 5:20:21 PM

Short Title: Anatomical Gifts. (Public)

Sponsors:

Referred to:

May 20, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REVISED ANATOMICAL GIFT ACT AND OTHER SECTIONS OF THE GENERAL STATUTES FOR CONSISTENCY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-602 reads as rewritten:

"**§ 90-602. Routine search for donor ~~information.~~ information; notification of hospital; definitions as provided in the Revised Uniform Anatomical Gift Act.**

(a) ~~The following persons may make a reasonable search for a document of gift or other information identifying the bearer as an organ donor or as an individual who has refused to make an anatomical gift:~~

~~(1) A law enforcement officer, firefighter, paramedic, or other official emergency rescuer finding an individual who the searcher believes is near death; and~~

~~(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.~~

For the purposes of this section, the terms "anatomical gift," "document of gift," "donor," and "refusal" have the same meaning as in G.S. 130A-412.4.

(a1) The following persons may make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer,

(2) A firefighter,

(3) A paramedic, or

(4) Another official emergency rescuer finding the individual.

If a document of gift or a refusal is located by a search under this subsection and the individual or deceased individual to whom it relates is taken to a hospital, the person conducting the search shall send the document of gift or refusal to the hospital or cause it to be sent.

(a2) If no other source of information is immediately available, a hospital shall make a reasonable search of an individual who the hospital reasonably believes is dead or near death, as soon as practical after the individual arrives at the hospital, for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal.

(b) Any law enforcement officer or other person listed in subsection ~~(a)~~ (a1) or (a2) of this section may conduct an administrative search of the accident-trauma victim's Division of Motor Vehicles driver record to ~~determine the individual's authorization for organ donation or refusal of organ donation.~~ ascertain whether the individual is a donor. If a document of gift or a refusal is located by a search under this subsection and the individual or deceased individual to whom it relates is taken to a hospital, the person conducting the search shall notify the hospital of the results or cause the hospital to be notified.

(c) A physical search pursuant to subsection ~~(a)~~(a1) or (a2) of this section ~~may be conducted at or near the time of death or hospital admission and~~ shall be limited to those personal effects of the individual where a drivers license reasonably may be stored. Any information, document, tangible objects, or other items discovered during the search shall be used solely for the purpose of ascertaining the individual's identity, notifying the individual's next of kin, and determining whether the individual intends to make an anatomical gift, and in no event shall any such discovered material be admissible in any subsequent criminal or civil proceeding, unless obtained pursuant to a lawful search on other grounds.

(d) A hospital or other person with duties under this section is not subject to criminal or civil liability for failing to discharge those duties but may be subject to administrative sanctions.

(e) A person that acts under this section with due care, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding."

SECTION 2. G.S. 130A-412.14 reads as rewritten:

"**§ 130A-412.14. Search and notification.**

~~(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:~~

~~(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and~~

~~(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.~~

~~(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.~~

~~(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.~~

A search of an individual who is reasonably believed to be dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal, and, if applicable, notification of the hospital to which the individual is taken, shall be governed by G.S. 90-602."

SECTION 3. G.S. 130A-391 is repealed.

SECTION 4. G.S. 32A-15(d) reads as rewritten:

"(d) This Article is intended and shall be construed to be consistent with the provisions of ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes. In the event of a conflict between the provisions of this Article and ~~Part 3~~ Part 3A of Article 16 of Chapter 130A, the provisions of ~~Part 3~~ Part 3A of Article 16 of Chapter 130A control."

SECTION 5. G.S. 90-210.124(d) reads as rewritten:

"(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 6. G.S. 90-210.129(q) reads as rewritten:

"(q) Before the cremation of amputated body parts, the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances of the amputation. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This section does not apply to the disposition of body parts cremated pursuant to ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes."

SECTION 7. G.S. 130A-415(f) reads as rewritten:

"(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift pursuant to ~~Part 3~~ Part 3A of this Article."

SECTION 8. G.S. 130A-420(d) reads as rewritten:

"(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under ~~Part 3~~ Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 9. 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
June 11, 2008

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **SB 1651 (Anatomical Gifts)**

General Comments

This bill results from a study directive from the General Assembly to the General Statutes Commission (Section 13 of S.L. 2007-538). S.L. 2007-538 replaced this State's then-existing version of the Uniform Anatomical Gift Act (former Part 3 of Article 16 of Chapter 130A of the General Statutes) with the Revised Uniform Anatomical Gift Act (Part 3A of Article 16 of Chapter 130A of the General Statutes) (the Revised Act). Two already-existing sections of the General Statutes, G.S. 90-602 (Routine search for donor information) and G.S. 130A-391 (Corneal tissue removal), contain provisions that conflict with provisions in the Revised Act. This bill reconciles those conflicts. In addition, the bill makes conforming amendments to five other sections of the General Statutes.

Specific Comments

Section 1 amends G.S. 90-602 to resolve conflicts between this section and G.S. 130A-412.14 (which is in the Revised Act).

G.S. 90-602 currently authorizes law enforcement officers, firefighters, paramedics, and other official rescue workers finding an individual who appears to be near death to make a reasonable search of the individual for organ donor status information. The statute authorizes a similar search by hospitals on the admission of an individual at or near the time of death if information on organ donor status is not immediately available from another source. The statute restricts the timing and scope of physical searches under its provisions and the use that can be made of documents, objects, or other items discovered during the search; use of search results is limited to identification of the victim, notification of the victim's next of kin, and identification of the victim as an organ donor. G.S. 90-602 also permits an administrative search of an accident or trauma victim's Division of Motor Vehicles driver record for organ donor status information.

G.S. 130A-412.14 has a physical search provision that is similar to the physical search provision of G.S. 90-602, but G.S. 130A-412.14 mandates the search and requires "the person responsible for conducting the search" to send any organ donor card or similar record that was found to the hospital where the dead or dying individual is taken. G.S. 130A-412.14 also has an immunity provision from civil or criminal liability for a person that fails to discharge the duties it imposes. This immunity provision expressly does not cover administrative sanctions.

In addition to the immunity provision found in G.S. 130A-412.14, persons acting under that section may also be covered by another immunity provision in the Revised Act (in G.S. 130A-412.20). This provision includes immunity from liability in a civil or criminal action or

administrative proceeding for a person that acts with due care in accordance with the Revised Act or attempts in good faith to do so. This provision could apply, for example, to a person who makes a search under G.S. 130A-412.14 but injures someone in the process.

Comments submitted by interested individuals and groups expressed concern about a mandatory search requirement for different groups that share overlapping responsibilities and noted that law enforcement officers in particular may have other crucial duties to perform at the scene of an accident, such as controlling traffic and rendering assistance to other injured persons. Because of these comments, the Commission concluded that as to law enforcement officers, firefighters, paramedics, and other emergency workers, there appear to be good reasons to retain G.S. 90-602's permissive search. The same considerations do not appear to apply to hospitals, however, and the Commission concluded that the mandatory search requirement of G.S. 130A-412.14 should be retained for them.

As a result, Section 1 amends G.S. 90-602 to incorporate some of the Revised Act's definitions ("anatomical gift," "document of gift," "donor," and "refusal") and update the terminology; authorizes, but does not mandate, a search of a dead or dying person for information on organ donor status by law enforcement officers, firefighters, and other official emergency workers who find the person; requires hospitals to make a reasonable search for organ donor information as soon as practical after individuals who are dead or near death arrive at the hospital if no other source of information is immediately available; continues authorization for an administrative search of an accident or trauma victim's Division of Motor Vehicles driver record for organ donor status information; continues to require that any organ donor status information found as a result of a search be sent to the hospital where the dead or dying person is taken; continues the location and use limits on searches and their results; incorporates G.S. 130A-412.14's immunity provision for persons that fail to discharge duties under G.S. 90-602 as amended; and, consistent with the Revised Act, provides an immunity provision for persons that act with due care in accordance with G.S. 90-602 or attempt in good faith to do so.

Section 2 replaces the current search and notification provisions of G.S. 130A-412.14 with a cross-reference to G.S. 90-602 as amended.

Section 3 repeals G.S. 130A-391, which authorizes medical examiners or regional pathologists, under certain conditions, to provide corneal tissue from a decedent to the North Carolina Eye and Human Tissue Bank or other donee specified in former G.S. 130A-405 without consent from the decedent or the decedent's next-of-kin. Authority for medical examiners to make an anatomical gift of body parts was included in prior versions of the Uniform Law Commission's Uniform Anatomical Gift Act but was deleted in the most recent revision in light of a series of § 1983 lawsuits in which the medical examiner's actions were held to violate the property rights of surviving family members. The relationship of medical examiners to the anatomical gift process is now addressed by G.S. 130A-412.23 (Cooperation between a medical examiner and the procurement organization) and G.S. 130A-412.24 (Facilitation of anatomical gift from decedent whose body is under the jurisdiction of a medical examiner).

Sections 4, 5, 6, 7, and 8 amend G.S. 32A-15(d), 90-210.124(d), 90-210.129(q), 130A-415(f), and 130A-420(d), respectively, to update cross-references.

Section 9 makes the bill effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1651*

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

S1651-ARD-24 [v.1]

Date 6/12 ,2008

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

Senator Brigham

moves to amend the bill on page 3, line 41, by rewriting the line to read"
" **SECTION 9.** G.S. 130A-412.31 reads as rewritten:
"**§ 130A-412.31. Giving of blood by persons ~~17~~ 16 years of age or more.**
A person who is ~~17~~ 16 years of age or more may give or donate blood to an individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of the donor. It shall be unlawful for a person under the age of 18 years to sell blood."
SECTION 10. This act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Principal Clerk ____
Reading Clerk ____

4th Corrected Notice MEETING CANCELLED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 17, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2178	Electronic Voting for Nonprofits.	Representative Ross
HB 2287	Service of Process/Electronic or Fax Receipt.	Representative Ross
SB 1632	2008 Technical Corrections Act.	Senator Hartsell
HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

3rd Corrected Notice – HB 1003 added

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Senator Fletcher L. Hartsell, Jr., Chair3rd

Principal Clerk
Reading Clerk

2nd Corrected Notice HB 545 added

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Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected Notice HB 1291 withdrawn

SENATE
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AND
BILL SPONSOR NOTICE

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Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
BILL SPONSOR NOTICE

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DAY	DATE	TIME	ROOM
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The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1291	NC Racial Justice Act.	Representative Parmon Representative Womble

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 17, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
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Presentations

Other Business

Adjournment

Senate Judiciary II (Criminal) Committee
Tuesday, June 17, 2008, 10:00 AM
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Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1549

Short Title:	Clarify Laws Governing Execution on Judgments.	(Public)
Sponsors:	Representatives McGee and Stam (Primary Sponsors).	
Referred to:	Judiciary II.	

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-313(1) reads as rewritten:

"**§ 1-313. Form of execution.**

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) Against ~~Property—~~property.

a. No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

b. Real or personal property required to satisfy the judgment is subject to execution regardless of whether the property is encumbered. However, any personal or real property sold under execution remains subject to all prior encumbrances, including liens, mortgages, deeds of trust, perfected security interests, and prior judgments which became effective prior to the lien of the judgment pursuant to which the execution sale is held, in the same manner and to the same extent as if no such sale had been held."

SECTION 2. This act becomes effective October 1, 2007.

HOUSE BILL 2178*

Short Title:	Electronic Voting for Nonprofits.	(Public)
Sponsors:	Representative Ross.	
Referred to:	Judiciary I.	

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO ALLOW CERTAIN VOTES BY ELECTRONIC TRANSMISSION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(9) "Effective date of notice" is defined in G.S. 55A-1-41.

(9a) 'Electronic' has the same meaning as in G.S. 66-312.

(9b) 'Electronic record' has the same meaning as in G.S. 66-312.

(9c) 'Electronic signature' has the same meaning as in G.S. 66-312.

(10) "Entity" includes:

a. Any domestic or foreign:

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

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

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

...

(26) "Vote" includes authorization by written ballot and written ~~consent.~~ consent, including electronic ballot and electronic consent."

SECTION 2. G.S. 55A-1-41 reads as rewritten:

"**§ 55A-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the member's address shown in the corporation's current record of members. To the extent the corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic corporation to its member in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A member may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

(e) Except as provided in subsection (c) of this section, written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;

(5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who

have the same address, the corporation's bylaws may provide that a single notice may be given to such members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice."

SECTION 3. Article 1 of Chapter 55A of the General Statutes is amended by adding a new Part to read:

"Part 7. Miscellaneous.

"**§ 55A-1-70. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 4. G.S. 55A-7-04 reads as rewritten:

"**§ 55A-7-04. Action by written consent.**

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 5. G.S. 55A-7-08 reads as rewritten:

"**§ 55A-7-08. Action by written ballot.**

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with

information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked."

SECTION 6. G.S. 55A-7-24 reads as rewritten:

"**§ 55A-7-24. Proxies.**

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for ~~him~~ the member by signing an appointment form, either personally or by ~~his~~ the member's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~ Without limiting G.S. 55A-1-70, an appointment in the form of an electronic record that bears the member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii)~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or

incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 7. G.S. 55A-8-21 reads as rewritten:

"**§ 55A-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 8. This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2287*
Committee Substitute Favorable 5/28/08

Short Title: Service of Process/Electronic or Fax Receipt. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j), reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in ~~subsection~~ subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the

addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. ~~Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served.~~

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent

appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee,

and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested,

addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to

be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – ~~Service upon~~Upon a foreign state or a political subdivision, agency, or instrumentality ~~thereof shall be effected~~thereof, pursuant to 28 U.S.C. § 1608."

SECTION 2. G.S. 1A-1, Rule 4(j2), reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of ~~G.S. 1-75.10(1).~~G.S. 1-75.10(a)(1).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service

by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or 1-75.10(6),~~G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return ~~or delivery receipt or~~ receipt, copy of the proof of delivery provided by the United States Postal ~~Service~~ Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

SECTION 3. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served."

SECTION 4. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

...

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party ~~averring:~~averring all of the following:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt ~~requested;~~requested.

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the ~~addressee; and~~addressee.

c. That the ~~genuine~~ delivery receipt or other evidence of delivery is attached.

....

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt."

SECTION 5. G.S. 1A-1, Rule 4(j1), reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of ~~G.S. 1-75.10(2),~~G.S. 1-75.10(a)(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:
Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)
_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to receipts given on or after that date

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1632*

Short Title:	2008 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

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. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

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

H 1

HOUSE BILL 545*

Short Title: General Statutes Comm. Technical Corrections. (Public)

Sponsors: Representatives Ross; and Bell.

Referred to: Judiciary I.

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-142.1(i) reads as rewritten:

"(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~the~~ individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10."

SECTION 2. G.S. 110-142.1(l) reads as rewritten:

"(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or ~~reimbursement~~ reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying

that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section."

SECTION 3. G.S. 70-27(b) reads as rewritten:

"(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to ~~G.S. 130-198~~ G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information."

SECTION 4. G.S. 70-30 reads as rewritten:

"**§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of ~~G.S. 130-198.~~ G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner."

SECTION 5. G.S. 70-39 reads as rewritten:

"**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of ~~G.S. 130-198~~ G.S. 130A-383 are not subject to the prohibitions contained in this Article."

SECTION 6. G.S. 152-7(6) reads as rewritten:

"**§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.**

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

...

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in ~~G.S. 130-98~~ G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

...."

SECTION 7. G.S. 140-5.17 is repealed.

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1003*

Second Edition Engrossed 5/15/07

Senate Judiciary II (Criminal) Committee Substitute Adopted 6/4/08

Short Title: Aggravating Factor/No Probation Compliance. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S PRIOR WILLFUL FAILURES TO COMPLY WITH CONDITIONS OF RELEASE WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision during the 10-year period prior to the commission of the offense for which the defendant is being sentenced."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

Principal Clerk
Reading Clerk

Corrected Notice **Meeting Cancelled**

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 19, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2178	Electronic Voting for Nonprofits.	Representative Ross
HB 2287	Service of Process/Electronic or Fax Receipt.	Representative Ross
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk _____
Reading Clerk _____

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AND
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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 19, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2178	Electronic Voting for Nonprofits.	Representative Ross
HB 2287	Service of Process/Electronic or Fax Receipt.	Representative Ross
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Presentations

Other Business

Adjournment

H 1

HOUSE BILL 545*

Short Title: General Statutes Comm. Technical Corrections. (Public)

Sponsors: Representatives Ross; and Bell.

Referred to: Judiciary I.

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-142.1(i) reads as rewritten:

"(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~the~~ individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10."

SECTION 2. G.S. 110-142.1(l) reads as rewritten:

"(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or ~~reimbursement~~ reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying

that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section."

SECTION 3. G.S. 70-27(b) reads as rewritten:

"(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to ~~G.S. 130-198~~ G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information."

SECTION 4. G.S. 70-30 reads as rewritten:

"**§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of ~~G.S. 130-198.~~ G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner."

SECTION 5. G.S. 70-39 reads as rewritten:

"**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of ~~G.S. 130-198~~ G.S. 130A-383 are not subject to the prohibitions contained in this Article."

SECTION 6. G.S. 152-7(6) reads as rewritten:

"**§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.**

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

...

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in ~~G.S. 130-98~~ G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

...."

SECTION 7. G.S. 140-5.17 is repealed.

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1003*

Second Edition Engrossed 5/15/07

Senate Judiciary II (Criminal) Committee Substitute Adopted 6/4/08

Short Title: Aggravating Factor/No Probation Compliance. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S PRIOR WILLFUL FAILURES TO COMPLY WITH CONDITIONS OF RELEASE WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision during the 10-year period prior to the commission of the offense for which the defendant is being sentenced."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1549

Short Title:	Clarify Laws Governing Execution on Judgments.	(Public)
Sponsors:	Representatives McGee and Stam (Primary Sponsors).	
Referred to:	Judiciary II.	

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-313(1) reads as rewritten:

"**§ 1-313. Form of execution.**

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) Against ~~Property—~~property.

a. No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

b. Real or personal property required to satisfy the judgment is subject to execution regardless of whether the property is encumbered. However, any personal or real property sold under execution remains subject to all prior encumbrances, including liens, mortgages, deeds of trust, perfected security interests, and prior judgments which became effective prior to the lien of the judgment pursuant to which the execution sale is held, in the same manner and to the same extent as if no such sale had been held."

SECTION 2. This act becomes effective October 1, 2007.

HOUSE BILL 2178*

Short Title:	Electronic Voting for Nonprofits.	(Public)
Sponsors:	Representative Ross.	
Referred to:	Judiciary I.	

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO ALLOW CERTAIN VOTES BY ELECTRONIC TRANSMISSION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(9) "Effective date of notice" is defined in G.S. 55A-1-41.

(9a) 'Electronic' has the same meaning as in G.S. 66-312.

(9b) 'Electronic record' has the same meaning as in G.S. 66-312.

(9c) 'Electronic signature' has the same meaning as in G.S. 66-312.

(10) "Entity" includes:

a. Any domestic or foreign:

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

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

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

...

(26) "Vote" includes authorization by written ballot and written ~~consent.~~ consent, including electronic ballot and electronic consent."

SECTION 2. G.S. 55A-1-41 reads as rewritten:

"**§ 55A-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the member's address shown in the corporation's current record of members. To the extent the corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic corporation to its member in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A member may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

(e) Except as provided in subsection (c) of this section, written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;

(5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who

have the same address, the corporation's bylaws may provide that a single notice may be given to such members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice."

SECTION 3. Article 1 of Chapter 55A of the General Statutes is amended by adding a new Part to read:

"Part 7. Miscellaneous.

"**§ 55A-1-70. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 4. G.S. 55A-7-04 reads as rewritten:

"**§ 55A-7-04. Action by written consent.**

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 5. G.S. 55A-7-08 reads as rewritten:

"**§ 55A-7-08. Action by written ballot.**

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with

information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked."

SECTION 6. G.S. 55A-7-24 reads as rewritten:

"**§ 55A-7-24. Proxies.**

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for ~~him~~ the member by signing an appointment form, either personally or by ~~his~~ the member's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~ Without limiting G.S. 55A-1-70, an appointment in the form of an electronic record that bears the member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii)~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or

incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 7. G.S. 55A-8-21 reads as rewritten:

"**§ 55A-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 8. This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2287*

Committee Substitute Favorable 5/28/08

Short Title: Service of Process/Electronic or Fax Receipt. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j), reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in ~~subsection~~ subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the

addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. ~~Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served.~~

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent

appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee,

and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested,

addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to

be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – ~~Service upon~~Upon a foreign state or a political subdivision, agency, or instrumentality ~~thereof shall be effected~~thereof, pursuant to 28 U.S.C. § 1608."

SECTION 2. G.S. 1A-1, Rule 4(j2), reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of ~~G.S. 1-75.10(1).~~G.S. 1-75.10(a)(1).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service

by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or 1-75.10(6),~~G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return ~~or delivery receipt or~~ receipt, copy of the proof of delivery provided by the United States Postal ~~Service~~ Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

SECTION 3. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served."

SECTION 4. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

...

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party ~~averring:~~averring all of the following:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt ~~requested;~~requested.

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the ~~addressee; and~~addressee.

c. That the ~~genuine~~ delivery receipt or other evidence of delivery is attached.

....

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt."

SECTION 5. G.S. 1A-1, Rule 4(j1), reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of ~~G.S. 1-75.10(2),~~G.S. 1-75.10(a)(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:
Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)
_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to receipts given on or after that date

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1632*

Short Title:	2008 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

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. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 24, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2178	Electronic Voting for Nonprofits.	Representative Ross
HB 2287	Service of Process/Electronic or Fax Receipt.	Representative Ross
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, June 24, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 545	General Statutes Comm. Technical Corrections.	Representative Ross
HB 1003	Aggravating Factor/No Probation Compliance.	Representative Steen, II Representative Barnhart Representative Johnson
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2178	Electronic Voting for Nonprofits.	Representative Ross
HB 2287	Service of Process/Electronic or Fax Receipt.	Representative Ross
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 24, 2008

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

FAVORABLE

H.B. **2178** Electronic Voting for Nonprofits.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **2287** Service of Process/Electronic or Fax Receipt.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, June 25, 2008

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

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

H.B. **545** General Statutes Comm. Technical Corrections.

Draft Number:	51020
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) **1003** Aggravating Factor/No Probation Compliance.

Draft Number:	51019
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Tuesday, June 24, 2008 at 10:00 AM
Room 1124,

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on June 24, 2008, in Room 1124 of the Legislative Building with eight members of the committee present. Senator Fletcher Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Ethan Henderson, Stephen Clark, Amanda Mintz, Jake Smith, T. J. Hoyt and Lexie Hergeth and thanked them for serving.

HB 2178 (Electronic Voting for Non profits.) In the absence of Representative Ross, Senator Hartsell explained the bill. Sen. Apodaca moved for a favorable report. All voted and the motion carried.

HB 2287 (Service of Process/Electronic or Fax Receipt.) Senator Hartsell explained the bill for Representative Ross. Senator Dorsett moved for a favorable report. All voted and the motion carried.

HB 1003) (Aggravating Factor/No Probation Compliance.) Senator Hartsell asked for a motion to accept the Proposed Committee Substitute for purposes of discussion. Senator Jones so moved, all voted and the motion carried. In the absence of Representative Barnhart, Senator Hartsell explained the bill. Senator Hartsell offered an amendment and Mr. Jeff Hudson, Staff Attorney, explained the amendment. After questions from Senators Queen and Jones, answered by Mr. Hudson, Senator Apodaca moved to adopt the amendment. All voted and the motion carried. Senator Hartsell explained the Proposed Committee Substitute. Questions from Senators Dorsett and Goodall were answered by Senator Hartsell and Mr. Doug Holbrook, representing Fiscal Research. Senator Apodaca moved for a favorable report to the Proposed Committee Substitute, as amended and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

House Bill 545 (General Statutes Comm. Technical Corrections.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. In the absence of Representative Ross, Senator Hartsell explained the bill. Additional information and explanation was given by Mr. Chip Killian, representing the North Carolina Association of Registers of Deeds, Judge Sanford Steelman of the North Carolina Court of Appeals and Chairman of the Dispute Resolution Commission, Senator Stevens and Ms. Betsy McConkey of the Department of Public Instruction. Questions from Senators Goodall and Dorsett were answered by Senator Stevens and Mr. Larry Wood of the Wake County Sheriff's Office. Senators Jones and Goodall moved for a favorable report to the Proposed Committee Substitute. All voted and the motion carried.

Senate Bill 1632 (2008 Technical Corrections Act.) Senator Hartsell gave comments and noted the bill would not be heard at this meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 24, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LARRY WOOD	WCSO
FRANK GUNTER	WCSO
CHARLES TODD	LITTLE
BOB KUCAB	NCHFA
Doug Heron	Williams Mullen
James Green	Intern for Senator Berger
Jim Johnson	BSA
David Hermen	NC Center for Nonprofits
Claire Hunter	MWC
Kim Hibbard	NCLM
Rhonda Tinsley	NCACC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
F.B. Towell	AOC
Kim Hargrove	Harnett Co. ROD
Amanda Garrett	Person County Reg. of Deeds
Jean M Keller	[illegible]
Michael Williamson	Dept. of State Treasurer
David Vanderwilde	Dept. of State Treasurer
John Madler	NC Sentencing Commission
P. Bly Hall	General Statutes Commission
Eric Leath	Visitor
Amy McConkey	Smith Anderson
Becky McConkey	Dept of Public Instruction

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cliff Vandyke	Law Officer
Johanna Reese	DOT
Anthony Allison	NCAEC
TROY D. PAGE	AOC.
Penny Hughes	IOG
Ozie Hallmark	SOS
Haley Haynes	SOS
[illegible]	SOS
CS Hollis	KCC
Duncan Wilson	Court of Appeals
Susie Sauls	COA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lunford L Shumaker	Dispute Resolution Commission
Bill O'Donnell	NCSCA
Katherine Joyce	NCASA
Courtney Denning	NC Bar Association
EK Sprenkel	NC DOT
[illegible]	WCPSS
[illegible]	SEANC
Robert Kaufman	Kaufman Law Firm
Scott Gardner	Duke Energy
Lisa Pierce	Ragsdale Liggett PLLC
PGD	NCFM

H 1

HOUSE BILL 545*

Short Title: General Statutes Comm. Technical Corrections. (Public)

Sponsors: Representatives Ross; and Bell.

Referred to: Judiciary I.

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-142.1(i) reads as rewritten:

"(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~the~~ individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10."

SECTION 2. G.S. 110-142.1(l) reads as rewritten:

"(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or ~~reimbursement~~ reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying

that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section."

SECTION 3. G.S. 70-27(b) reads as rewritten:

"(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to ~~G.S. 130-198~~ G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information."

SECTION 4. G.S. 70-30 reads as rewritten:

"**§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of ~~G.S. 130-198.~~ G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he will immediately proceed with his investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of ~~G.S. 130-198,~~ G.S. 130A-383, he shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the Chief Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The Chief Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the Chief Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The Chief Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner."

SECTION 5. G.S. 70-39 reads as rewritten:

"**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of ~~G.S. 130-198~~ G.S. 130A-383 are not subject to the prohibitions contained in this Article."

SECTION 6. G.S. 152-7(6) reads as rewritten:

"**§ 152-7. Duties of coroners with respect to inquests and preliminary hearings.**

The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

...

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in ~~G.S. 130-98~~ G.S. 130A-383, the coroner shall notify the district attorney of the superior court and the medical examiner.

...."

SECTION 7. G.S. 140-5.17 is repealed.

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 545*
PROPOSED SENATE COMMITTEE SUBSTITUTE H545-CSSV-88 [v.8]

Short Title: Clarify and Amend Various Provisions. (Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO: (1) PROVIDE THE HOUSING FINANCE AGENCY TWO ADDITIONAL POWERS CONCERNING REAL PROPERTY AND SERVICES RETAINED FOR ISSUANCE OF BONDS; (2) AUTHORIZE A ONETIME BULK UPDATE OF REGISTERED AGENT INFORMATION; (3) AMEND THE LIST OF ENTITIES INCLUDED AS "ESTABLISHED LEGAL SERVICES PROGRAMS" TO WHICH THE NORTH CAROLINA STATE BAR MAY ALLOCATE FUNDS UNDER THE ACCESS TO CIVIL JUSTICE ACT AND THE DOMESTIC VIOLENCE ASSISTANCE ACT; (4) VALIDATE CERTAIN NOTARIAL ACTS FILED IN THE MECKLENBURG COUNTY REGISTER OF DEEDS OFFICE; (5) VALIDATE CERTAIN NOTARIAL ACTS PERFORMED ON OR BEFORE MAY 1, 2008; (6) MAKE A TECHNICAL CHANGE TO THE NAME OF THE NORTH CAROLINA STATE ART SOCIETY; (7) MAKE VARIOUS CHANGES RELATED TO THE VERIFICATION, RECORDATION, AND INDEXING OF DOCUMENTS PRESENTED TO REGISTERS OF DEEDS; (8) CLARIFY SCOPE OF AUTHORITY TO IMPOSE SANCTIONS IN MEDIATED SETTLEMENT CONFERENCES; (9) PROVIDE AN EXTENSION OF TIME FOR THE REALIGNMENT OF BUDGETS WITHIN THE DEPARTMENT OF PUBLIC INSTRUCTION; (10) AUTHORIZE INCREASED DORMITORY CAPACITY IN CERTAIN COUNTY DETENTION FACILITIES; AND (11) AUTHORIZES THE STATE TREASURER TO DISCLOSE THE NAMES AND ADDRESSES OF RETIRED STATE AND LOCAL EMPLOYEES TO CERTAIN ORGANIZATIONS.

The General Assembly of North Carolina enacts:

HOUSING FINANCE AGENCY CHANGES

SECTION 1.(a) G.S. 122A-5 reads as rewritten:

"**§ 122A-5. General powers.**

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

...

(25) To participate in and administer federal housing programs, including housing rehabilitation, construction of new housing, assistance to the homeless, and home ownership ~~assistance.~~assistance;

(26) To acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The Board of Directors may pledge or encumber income and assets of the Agency to secure financing for real property; and

(27) To select and retain, subject to the approval of the Local Government Commission, the financial consultants, underwriters, and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed."

SECTION 1.(b) G.S. 122A-8.1 is repealed.

BULK UPDATE OF REGISTERED AGENT INFORMATION

SECTION 2.(a) The following definitions apply in this section:

(1) Department. – The Department of the Secretary of State.

(2) Filer. – An individual, entity, or corporation that files a single notice pursuant to this section for more than 20,000 entities on file with the Department.

(3) Notice. – A bulk filing which includes the information required in G.S. 55D-31(a)(2) through (6) and a certification that the filer has complied with the entity notification requirements of G.S. 55D-31(b). For a notice intended to update information for unincorporated nonprofit associations, "notice" shall also mean a filing which includes the information required by G.S. 59B-11(b)(4). Any notice filed must be in an electronic form acceptable to the Department and include a written statement that the notice is filed pursuant to this section.

SECTION 2.(b) Upon receipt and filing by the Department, a notice pursuant to this section shall be sufficient as a matter of law under G.S. 55D-31 and G.S. 59B-11 to update registered office and registered agent information for each entity on file with the Department for which the filer is listed on the records of the Department as the registered office, the registered agent, or both.

SECTION 2.(c) The requirements of G.S. 55D-13(a) and (b), 55D-10(b)(8), 55-1-22(a), 55A-1-22(a), 57C-1-22(a), 59-35.2(a), 59-1106(a), and 59B-11(f) shall not apply to notices filed pursuant to this section.

SECTION 2.(d) This section shall only apply to one notice for each filer.

SECTION 2.(e) Unless otherwise specified, the change of address shall become effective on the 45th day following the Department's receipt of a notice filed pursuant to this section. A filer may specify in the notice a later effective date for the change of address, but not an earlier effective date.

SECTION 2.(f) A notice filed pursuant to this section shall be delivered to the Department no later than one year after the effective date of this section.

UPDATE ENTITIES RECEIVING FUNDS FROM STATE BAR

SECTION 3.(a) G.S. 7A-474.2 reads as rewritten:

"**§ 7A-474.2. Definitions.**

The following definitions shall apply throughout this Article, unless the context otherwise requires:

....

(1a) "Established legal services programs" means the following not-for-profit corporations using State funds to serve the counties listed: Legal Services of the Southern Piedmont, serving Cabarrus, Gaston, Mecklenburg, Stanly, and Union Counties; ~~Legal Aid Society of Northwest North Carolina, serving Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties;~~ Pisgah Legal Services, serving Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; and Legal Aid of North Carolina, a statewide program; or any successor entity or entities of the named organizations, or, should any of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area.

..."

SECTION 3.(b) G.S. 7A-474.4 reads as rewritten:

"**§ 7A-474.4. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs based upon the eligible client population in each area, with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; ~~Legal Aid Society of Northwest North Carolina receiving half of the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties;~~ and Legal Services of Southern Piedmont receiving half of the allocation for Cabarrus, Gaston, Mecklenburg, Stanly, and Union Counties. The North Carolina State Bar shall not use any of these funds for its administrative costs."

SECTION 3.(c) G.S. 7A-474.17 reads as rewritten:

"**§ 7A-474.17. Definitions.**

The following definitions shall apply throughout this Article, unless the context otherwise requires:

...

(3) "Established legal services program" means the following not-for-profit corporations using State funds to serve the counties listed: ~~Legal Aid Society of Northwest North Carolina, serving Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties;~~ Pisgah Legal Services, serving Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties; and Legal Aid of North Carolina; or any successor entity or entities of the named organizations, or, should any of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area."

SECTION 3.(d) G.S. 7A-474.19 reads as rewritten:

"**§ 7A-474.19. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania ~~Counties, and Legal Aid Society of Northwest North Carolina receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties.~~Counties. Funds shall be allocated to each program based on the counties served by that program using the following formula:

(1) Twenty percent (20%) based on a fixed equal dollar amount for each county.

(2) Eighty percent (80%) based on the rate of civil actions filed pursuant to Chapter 50B of the General Statutes in that county.

The North Carolina State Bar shall not use any of these funds for its administrative costs."

VALIDATION OF CERTAIN NOTARIAL ACTS

SECTION 4. G.S. 10B-70 reads as rewritten:

"**§ 10B-70. Certain notarial acts for local government agencies validated.**

(a) Any acknowledgment taken and any instrument notarized for a local government agency by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, by a person whose notary commission has expired, or by a person who failed to qualify within 45 days of commissioning as required by G.S. 10B-10, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed for a local government agency on or after October 31, 2006, and before June 30, 2007.

(b) Any electronic document filed in the Mecklenburg County Register of Deeds office that purports to be notarized in the Commonwealth of Virginia and that contains the typed name of a Virginia notary together with the notary's expiration date shall be given the same legal effect as if the person performed a lawful notarization in Virginia."

SECTION 5. G.S. 10B-65 reads as rewritten:

"**§ 10B-65. Acts of notaries public in certain instances validated.**

...

(e) This section applies to notarial acts performed on or before ~~February 1, 2004.~~May 1, 2008."

NORTH CAROLINA STATE ART SOCIETY NAME CHANGE

SECTION 6.(a) G.S. 135-27)d) reads as rewritten:

"(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause the employees of such association or organization so employed prior to July 1, 1983, to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. The provisions of this subsection shall be fully applicable to the North Carolina Symphony Society, Inc. and the North Carolina State Art Society, Inc."

SECTION 6.(b) G.S. 135-40.2(f) reads as rewritten:

"(f) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina State Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Plan the full cost of providing these benefits under this section as determined by the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. In addition, each association, organization or board shall pay to the Plan an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member."

SECTION 6.(c) The title of Article 3 of Chapter 140 of the General Statutes reads as rewritten:

"Article 3.
North Carolina State Art Society."

SECTION 6.(d) G.S. 140-5.13(d)(2) and (5) read as rewritten:

"(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative appointees shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

...

(2) One member shall be elected by the North Carolina State Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.

...

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina State Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina State Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

...."

REGISTER OF DEEDS CHANGES

SECTION 7.(a) G.S. 47-14 reads as rewritten:

"**§ 47-14. Register of deeds to verify the presence of proof or acknowledgement and register ~~instruments;~~ instruments and electronic documents; order by judge; instruments to which register of deeds is a party.**

(a) Verification of Instruments. – The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the ~~said~~ proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any ~~document~~ instrument previously recorded or any certified copy of any ~~document~~ instrument previously recorded may be ~~rerecorded, regardless of whether it has been changed or altered, or it is being rerecorded pursuant to G.S. 47-36.1.~~ rerecorded provided the instrument is conspicuously marked on the first page as a rerecording. The register of deeds may rely on the marking and the appearance of the original recording office's recording information to determine that an instrument is being presented as it was

previously recorded. The register of deeds is not required to further verify the proof or acknowledgement of or determine whether any changes or alterations have been made after the original recording to an instrument presented for rerecording. The register of deeds ~~shall not be~~ is not required to verify or make inquiry concerning any of the following:

(1) ~~(i) the~~ The legal sufficiency of any proof or ~~acknowledgement,~~ acknowledgement.

(2) ~~(ii) the~~ The authority of any officer who took a proof or ~~acknowledgement,~~ acknowledgement.

(3) ~~(iii) the~~ The legal sufficiency of any document presented for registration.~~registration, or (iv) upon presentation of the original document for re-recording, whether the original document has been changed or altered.~~"

(a1) Verification of Electronic Documents. – The requirements of subsection (a) of this section for verification of the execution of an instrument are satisfied with respect to an electronic document if all of the conditions in this subsection are met. For purposes of this subsection, the term "electronic document" is as defined in G.S. 47-16.2(3). The conditions are:

(1) The register of deeds has authorized the submitter to electronically register the electronic document.

(2) The document is submitted by a United States federal or state governmental unit or instrumentality or a trusted submitter. For purposes of this subsection, "a trusted submitter" means a person or entity that has entered into a memorandum of understanding regarding electronic recording with the register of deeds in the county in which the electronic document is to be submitted.

(3) The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the digitized image of the document as it will appear on the public record.

(4) Evidence of other required governmental certification or annotation appears on the digitized image of the document as it will appear on the public record.

(5) With respect to a document submitted by a trusted submitter, the digitized image of the document as it will appear on the public record contains the submitter's name in the following completed statement on the first page of the document image: "Submitted electronically by _____ (submitter's name) in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the _____ (insert county name) County Register of Deeds."

(6) Except as otherwise provided in this subsection, the digitized image of the electronic document conforms to all other applicable laws and rules that prescribe recordation.

(a2) Verification of Officer's Signature. – Submission to a register of deeds of an electronic document requiring proof or acknowledgement is a representation by the submitter that, prior to submission, the submitter verified the officer's signature required under (a1)(3) of this section to be one of the types of signatures listed in this subsection. The register of deeds may rely on this representation for purposes of determining compliance with the signature requirements of this section. The electronic registration of a document with a register of deeds prior to the effective date of this statute is not invalid based on whether the register verified the officer's signature in accordance with this subsection. The types of signatures are:

(1) A signature in ink by hand.

(2) An electronic signature as defined in G.S. 10B-101(7).

(b) Order by Judge. – If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may ~~present the instrument~~ apply to any judge of the district court in the district, including the county in which the instrument is to be registered, for an order for registration.~~a judge, as provided in subsection (c), and the~~ Upon finding all of the requirements in this subsection, the judge shall ~~determine that if~~ order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly. The requirements are:

(1) If the instrument requires proof or ~~acknowledgement and if~~ acknowledgement, that the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and ~~acknowledgements, and if said~~acknowledgements.

(2) That the proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if required.~~required, the judge shall so adjudge, and shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly.~~

~~(c) Application for an order for registration pursuant to subsection (b) of this section shall be made to any judge of the district court in the district including the county in which the instrument is to be registered.~~

(d) Scope. – Registration of an instrument pursuant to this section is not effective with regard to parties who have not executed the instrument or whose execution thereof has not been duly proved or acknowledged.

(e) Register of Deeds as Party. – Any instrument required or permitted by law to be registered in which the register of deeds of the county of registration is a party may be proved or acknowledged before any magistrate or any notary public. ~~Any such~~ The clerk of superior court of the county of registration shall examine any instrument presented for registration.~~registration shall be examined by the clerk of superior court of the county of registration and if~~ If it appears that the execution and acknowledgment are

in due ~~form he~~ form, the clerk shall so certify and the instrument shall then be recorded in the office of the register of deeds.

(f) Presumption of Notarial Seal. – The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption ~~shall apply~~ applies regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37."

SECTION 7.(b) G.S. 47-31(a) reads as rewritten:

"(a) A duly certified copy of any deed or writing required or allowed to be registered may be registered in any county.~~county without further certification pursuant to G.S. 47-14; and the~~ The register of deeds may rely on the record keeper's certification on a presented document that the document is a certified copy and is not required to further verify the proof or acknowledgment otherwise required by G.S. 47-14 or to determine whether the document has been changed or altered after it was certified. The registered or duly certified copy of any deed or writing that has been registered in the county where the land is situate may be given in evidence in any court of the State."

SECTION 7.(c) G.S. 47-36.1 reads as rewritten:

"**§ 47-36.1. Correction of errors in recorded instruments.**

Notwithstanding G.S. 47-14 and 47-17, ~~an obvious~~ notice of typographical or other minor error in a deed or other instrument recorded with the register of deeds may be given by recording an affidavit. If an affidavit is conspicuously identified as a corrective or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. Notice of the corrective information as provided by the affiant is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered. ~~corrected by rerecording the original instrument with the correction clearly set out on the face of the instrument and with a statement of explanation attached. The parties who signed the original instrument or the attorney who drafted the original instrument shall initial the correction and sign the statement of explanation. If the statement of explanation is not signed by the parties who signed the original instrument, it shall state that the person signing the statement is the attorney who drafted the original instrument. The statement of explanation need not be acknowledged. Notice of the correction made pursuant to this section shall be effective from the time the instrument is rerecorded.~~"

SECTION 7.(d) G.S. 161-21 reads as rewritten:

"**§ 161-21. General index kept.**

The board of county ~~commissioners,~~ commissioners shall, at the expense of the county, ~~shall cause to be made and~~ maintain a consolidated ~~into one book a general~~ index of all the deeds and other documents affecting real property in the register's office. ~~The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the appropriate family name and the appropriate alphabetical subdivision of said family name, according to the particular system in use.~~"

SECTION 7.(e) G.S. 161-22 reads as rewritten:

"**§ 161-22. Index of registered instruments.**

(a) ~~The~~ Except as otherwise provided by statute, the register of deeds shall provide and keep in ~~her or his~~ the register's office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds, and other instruments required or authorized to be registered, and ~~such~~ the indexes shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors, or obligees. The full names of parties shall be entered in the indexes in accordance with the minimum indexing standards adopted pursuant to G.S. 147-54.3(b) and (b1). Reference shall be made, opposite each name, to the book and page or other location where the instrument is registered. All instruments shall be indexed on either the temporary or permanent index within 24 hours of registration. The register of deeds ~~shall~~ is not ~~be~~ required to index an instrument that is part of a document containing multiple instruments, as defined in G.S. 161-10(a)(1), unless the title of that instrument is shown on the first page of the document and the additional registration fee is paid as required by G.S. 161-10(a)(1).

~~(b) In offices using the "Family" index system, the index entry shall show the name of each party under the appropriate family name and the initials of the party under the appropriate alphabetical arrangement of the index. In offices using indexing systems having subdivisions of the letters of the alphabet, a registered instrument shall be deemed properly registered only when it has been indexed under the correct subdivision of the appropriate letter of the alphabet.~~

~~(c) Instruments affecting real property shall be indexed in the appropriate real property indexes, and instruments affecting personal property shall be indexed in the appropriate personal property indexes. Instruments affecting both real and personal property shall be indexed in both the real and personal property indexes.~~

(d) Deeds of trust may be indexed in the names of the grantor and beneficiary only.

(e) Certificates filed for recording pursuant to G.S. 59-2, the Uniform Limited Partnership Act, shall be indexed only under the names of the partnership and each of the general partners. The register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that ~~such~~ the documents are indexed only in the names of the partnership and of each of the general partners.

(f) The alphabetical indexes required by this section may be maintained in index books, on index cards, on film, or in computers or other automated data-processing

machines. If the index is maintained in a computer or other automated data processing machine, the register of deeds shall, at least once each month, obtain from the computer or other automated data-processing machine a printed copy on paper or film, or a tape or disk, of all index entries made since the previous printed or filmed copy, or tape or disk, was obtained. These printed or filmed copies, tapes or disks, shall be retained as security copies and may not be altered or destroyed until a subsequent security copy is made containing the index entries from all previous security copies.

(g) The register of deeds may adopt rules establishing indexing procedures and the format of the indexes. The rules shall ~~be in conformity~~ conform with the requirements of this section and of other applicable statutes. The rules may address such subjects, by way of example and not limitation, as the indexing of business firms, the indexing of names containing numerals, and the indexing of government agencies. The rules shall be posted in at least two prominent places in the register of ~~deeds'~~deed's office and shall also be placed near the index books or in user manuals in offices using automated indexing systems. ~~From and after the effective date of such rules, a registered instrument shall be deemed properly registered only when it has been indexed according to the rules.~~

(h) No instrument shall be deemed registered until it has been indexed ~~as provided in this section.~~in a manner to put a reasonably careful and prudent examiner upon inquiry, and, if upon inquiry, the instrument would have been found.

~~(i) A violation of this section shall constitute a Class 1 misdemeanor.~~"

MEDIATED SETTLEMENT CONFERENCE CHANGES

SECTION 8.(a) G.S. 7A-38.1(g) reads as rewritten:

"(g) Sanctions. – Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause, fails to attend or fails to pay any or all of the mediator's or other neutral's fee in compliance with this section and the rules ~~adopted under this section, shall be~~ promulgated by the Supreme Court to implement this section is subject to the contempt powers of the court and ~~any appropriate~~ monetary ~~sanction~~ sanctions imposed by a resident or presiding superior court judge.~~judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference.~~ The monetary sanctions may include the payment of fines, attorney fees, mediator and neutral fees, and the expenses and loss of earnings incurred by persons attending the procedure. A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and upon any person against whom the sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence."

SECTION 8.(b) G.S. 7A-38.3B(j) reads as rewritten:

"(j) Sanctions. ~~The clerk may sanction any~~ Any person ordered to attend a mediation conducted pursuant to this section and rules of the Supreme Court who, without good cause, fails to attend the ~~mediation, by imposing an appropriate monetary sanction, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference.~~ mediation or fails to pay any or all of the mediator's fee in compliance with this section and the rules promulgated by the Supreme Court to implement this section, is subject to the contempt powers of the clerk and monetary sanctions. The monetary sanctions may include the payment of fines, attorney fees, mediator fees, and the expenses and loss of earnings incurred by persons attending the mediation. If the clerk imposes sanctions, the clerk shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions is reviewable by the superior court in accordance with G.S. 1-301.2 and G.S. 1-301.3, as applicable, and thereafter by the appellate courts in accordance with G.S. 7A-38.1(g)."

SECTION 8.(c) G.S. 7A-38.4A(e) reads as rewritten:

"(e) Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause fails to ~~attend,~~ attend or fails to pay any or all of the mediator or other neutral's fee in compliance with this is subject to the contempt powers of the court and ~~any appropriate~~ monetary ~~sanction~~ sanctions imposed by a district court judge.~~judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the settlement procedure. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal, and the entire record shall be reviewed to determine whether the order is supported by substantial evidence.~~A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and upon any person against whom sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order making findings of fact and conclusions of law. An order imposing sanctions is reviewable upon appeal, and the entire record shall be reviewed to determine whether the order is supported by substantial evidence."

EXTENSION FOR DPI REALIGNMENT OF BUDGETS

SECTION 9.(a) The heading of Section 7.29 of S.L. 2007-323 reads as rewritten:

"**~~REORGANIZATION OF THE DEPARTMENT OF PUBLIC INSTRUCTION~~REALIGNMENT OF BUDGETS TO ORGANIZATIONAL STRUCTURE**"

SECTION 9.(b) Section 7.29(b) of S.L. 2007-323 reads as rewritten:

"**SECTION 7.29.(b)** This section expires June 30, ~~2008.~~2009."

MODIFY DORMITORY REQUIREMENTS IN CERTAIN COUNTY DETENTION FACILITIES

SECTION 10.(a) Notwithstanding any law or rule to the contrary, each dormitory in a county detention facility may house up to 56 inmates as long as the dormitory provides all of the following:

(1) A minimum floor space of 70 square feet per inmate including both the sleeping and dayroom area.

(2) One shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per eight inmates, and one water fountain.

(3) A telephone jack or other telephone arrangement provided within the dormitory.

(4) Space designed to allow a variety of activities.

(5) Sufficient seating and tables for all inmates.

(6) A way for officers to observe the entire area from the entrance.

SECTION 10.(b) This act applies only to those counties that have a population in excess of 600,000 according to the most recent decennial federal census.

DISCLOSURE OF RETIRED STATE AND LOCAL EMPLOYEE INFORMATION TO CERTAIN ORGANIZATIONS

SECTION 11.(a) G.S. 126-22 is amended by adding a new subsection to read:

"(d) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former State employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees."

SECTION 11.(b) G.S. 115C-321 is amended by adding a new subsection to read:

"(b1) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former public school employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees."

SECTION 11.(c) G.S. 115D-29 reads as rewritten:

"**§ 115D-29. Confidential information in personnel files; access to information.**

(a) All information contained in a personnel file, except as otherwise provided in this Article, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such [an] inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

(b) Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record.

(c) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former community college employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees."

SECTION 11.(d) G.S. 153A-98 is amended by adding a new subsection to read:

"(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees."

SECTION 11.(e) G.S. 160A-168 is amended by adding a new subsection to read:

"(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees."

EFFECTIVE DATE

SECTION 12. Subsections (a) and (c) of Section 7 of this act become effective October 1, 2008. The repeal of subsection (c) of G.S. 161-22 in Section 7(e) of this act is effective July 1, 2008. Section 8 of this act becomes effective January 1, 2009. Section 9 of this act becomes effective June 30, 2008. The remainder of this act is effective when it becomes law.

HOUSE BILL 545:
Clarify and Amend Various Provisions

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 19, 2008
Introduced by:	Rep. Ross	**Summary by:**	Jennifer McGinnis; Trina Griffin Committee Counsel
Version:	PCS to First Edition H545-CSSV-88		

SUMMARY: ***The Proposed Committee Substitute for House Bill 545 differs from the version considered by the Committee on June 12, 2008, as follows:***

- ***It rewrites the authorization for a one-time bulk update of registered agent information on file with the Department of the Secretary of State to address a constitutional concern (Section 2).***
- ***It makes a technical change to the proper name of the North Carolina State Art Society, Inc. (Section 6).***
- ***It makes several changes to the statutes governing the verification, recordation, and indexing of documents presented to the register of deeds (Section 7).***
- ***It clarifies a judge's authority to impose sanctions in the course of a mediated settlement conference in both district and superior courts (Section 8).***
- ***It extends for one year the time that the Department of Public Instruction has to realign its budgets consistent with its reorganization of positions in accordance with the plan adopted by the State Board of Education (Section 9).***
- ***It authorizes increased dormitory capacity for certain county detention facilities (Section 10).***
- ***It authorizes the Retirement Systems Division of the Department of the State Treasurer to disclose the names and addresses of former State, public school, community college, and local governmental employees to domiciled nonprofit organizations that represent 2,000 or more active or retired State government, local government, or public school employees (Section 11).***

BILL ANALYSIS:

HOUSING FINANCE AGENCY CHANGES

Section 1 of the PCS would repeal G.S. 122A-8.1 and give the Housing Finance Agency (HFA) two additional powers:

- **Concerning real property**: The power to deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The PCS authorizes the FHA's Board of Directors to pledge or encumber income and assets of the FHA to secure financing for real property.

  Background: With regard to the power to deal with real property, similar power is given elsewhere in the General Statues to the following entities: the North Carolina State Bar; the Auctioneers Commission; the Licensing Board for General Contractors; the Board of Examiners for Engineers and Surveyors; and the Medical Board; Board of Nursing.

- **Concerning services retained for bond issuance**: The power to select, retain, subject to the approval of the Local Government Commission, consultants, underwriters, and attorneys for the

issuance of bonds. The PCS also authorizes the payment of these individuals from the proceeds of the bond issuance for which their services were performed.

Background: Similar power is given elsewhere in the General Statues to the following entities: the State and local governments; the Medical Care Commission; a joint agency created pursuant to Ch. 159B (Joint Municipal Electric Power); an authority created pursuant to Ch. 159C (Industrial and Pollution Control); the Capital Facilities Finance Agency; and a regional sports authority created pursuant to Ch. 160A (Cities and Towns).

The PCS would repeal G.S. 122A-8.1 which gave the State Treasurer: (i) the power to issue bonds and notes authorized under the Housing Finance Act; (ii) the sole discretion to determine the interest rate, maturities, and other terms and conditions; and (iii) the power to employ and designate consultants, underwriters, and attorneys for the issuance of bonds.

BULK UPDATE OF REGISTERED AGENT INFORMATION

Section 2 of the PCS would authorize a one-time bulk update of registered office and registered agent information on file with the Department of the Secretary of State.

Background: This provision was requested by Campbell University in order to facilitate a real estate transaction involving an office building in which registered agents currently lease office space. Specifically, there are three corporations that serve as a registered agent for thousands of entities. Due to their physical relocation, their address on file with the Secretary of State needs to be updated. Under the General Statutes, this update of information would result in fees of approximately $150,000. The provision in the PCS would permit the update of this information without assessment of the fees.

The prior PCS identified by name the three corporations that serve as the registered agent for these entities. Section 1 of Article VIII of the North Carolina Constitution prohibits private emoluments for corporations.[1] This section of the PCS has been modified to address this concern. Under the current version of the PCS, the provision now applies to "an individual, entity, or corporation that files a single notice for more than 20,000 entities on file with the Secretary of State."

UPDATE ENTITIES RECEIVING FUNDS FROM STATE BAR

Section 3 of the PCS would amend the list of entities included as "established legal services programs" to which the North Carolina State Bar may allocate funds under the Access to Civil Justice Act and the Domestic Violence Assistance Act.

Background: According to information provided by staff with the State Bar, currently both Acts refer to the Legal Aid Society of Northwest North Carolina (LASNNC) as a named "established legal services program" that should receive funding for serving particular counties. LASNNC has transferred staff, assets and programming to Legal Aid of North Carolina ((LANC) a State-wide legal services program referenced in the statute), and the State Bar is presently allocating the funds previously sent to LASNNC to LANC as an "entity ...providing substantially the same services in substantially the same service

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[1]**Section 1. Corporate charters.** No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

area." However, the LASNNC board has decided not to dissolve the corporate entity and to explore other possibilities for work the entity could do. The State Bar has therefore requested that LASNNC be removed from the statutes to avoid any possible confusion over how the State funds for legal aid should be allocated. LASNNC leadership agrees with this request.

VALIDATION OF CERTAIN NOTARIAL ACTS

Section 4 of the PCS would provide that electronic documents filed in the Mecklenburg County Register of Deeds office that purport to be notarized in the Commonwealth of Virginia and that contain the typed name of a Virginia notary together with the notary's expiration date shall be given the same legal effect as if the person performed a lawful notarization in Virginia.

Background: According to information provided by staff of the Department of the Secretary of State, it was recently discovered that Virginia has yet to authorize electronic notarization and it is the opinion of Virginia's commissioning authority that any purported electronic notarization performed in Virginia would not be a notarization at all. Approximately 60,000 electronic documents that purport to have electronic notarizations performed in Virginia, however, have been filed in the Mecklenburg County Register of Deeds office. The provision in the PCS would validate these notarial acts.

Section 5 of the PCS would amend G.S. 10B-65 to validate certain, otherwise invalid, notarial acts performed on or before **May 1, 2008**. The statute currently applies to notarial acts performed on or before February 1, 2004.

NORTH CAROLINA STATE ART SOCIETY NAME CHANGE

Section 6 amends in various statutes the reference to the "North Carolina Art Society, Inc." by inserting the word "State" to reflect the entity's correct corporate name.

REGISTER OF DEEDS CHANGES

Section 7[2] makes several changes to the statutes related to the verification, recordation, and indexing of documents presented to the register of deeds. These changes are recommendations of the North Carolina Association of Register of Deeds. The changes have been reviewed by the Real Property Section of the NC Bar Association, the Electronic Recording Council, and the Land Records Advisory Committee of the Secretary of State.

Subsection (a) amends G.S. 47-14. G.S. 47-14 requires a register of deeds to verify notary seals, signatures, and commission expiration dates on instruments prior to recording them, if the instrument requires acknowledgement or proof. It also sets out those items that and those circumstances under which a register is not required to verify. Under current law, a register is not required to verify whether an original document being presented for rerecording has been changed or altered. Registers are reporting that this language is being used to rerecord documents that have been changed after notarization by someone other than the grantor. The wording of the current law seems to suggest that an original document may be rerecorded with alterations. This statute is also being used to rerecord certified copies that have been altered despite the fact that a certified copy that has been altered is no longer a certified copy.

Subsection (a) of the PCS eliminates the apparent permission to rerecord documents that have been altered after they have been acknowledged. To rerecord an original document, the person presenting the document must mark the first page as a rerecording, which will serve as a representation that it is the same unaltered document as previously recorded. The register has no responsibility to check for

[2] The summary information for this section was provided by the UNC School of Government.

alterations. Subsection (b) makes similar changes to the statute governing the rerecording of certified copies.

Subsection (a) also adds language to address the verification of electronic documents. Acknowledged documents must have an original notary signature, unless a statute authorizes a copy to be registered. This requirement ensures some measure of authenticity of documents that the register reviews and copies into the public record. Electronic documents are not capable of the same kind of verification as paper submissions. New subsection (a1) of G.S. 47-14 clarifies the verification requirements for electronically submitted documents. Generally, the register's verification responsibilities would involve four steps:

1. Checking the submitter's authorization to record electronically.
2. Checking for compliance with any agreements with the register.
3. Verifying completion of the same notary elements as are checked with paper documents.
4. Verifying that trusted submitters have placed a statement on the document image about the submitter's identity and recording requirements compliance.

An electronic document will be an "original" only in the sense that it has the same content as it had when the notary completed the acknowledgment. Technology exists for a register to check a record received electronically for information that only the notary could attach to it and that indicates the record was not altered after it was acknowledged. This kind of authentication was not envisioned when the verification statute was enacted, but it seems to serve the "originality" purpose of verification. Under current North Carolina electronic notary rules, an electronically notarized document must have visible images of the notary's seal and signature. For those documents, a register and the public can see the familiar seal and signature on the record. However, not all states require these images for electronic notarizations. Some states allow electronic notaries to use a process that does not create what looks like a seal and handwritten signature, but instead gives the recipient a message confirming that the notary attached code with acknowledgment information to the document. The law does not currently address whether a register may record documents in this form. The new language authorizes registers who wish to accept electronic notarizations requiring acknowledgements to do so if they can confirm that the acknowledgements have been completed. They can accept electronic documents from two kinds of submitters: the government or a "trusted submitter."

Under this new provision, registers are not required to accept electronic submissions, nor does it require registers who decide to accept electronic documents, to accept them from anyone except those who are authorized.

Subsection (b) – See the explanation for subsection (a) regarding changes related to the rerecording of instruments.

Subsection (c) – This subsection changes the available methods for recording a document about typographical or minor errors by eliminating the use of statements of explanation and authorizing the use of an affidavit to explain and show corrections. Any person may submit an affidavit of correction to make a record of typographical or minor errors. The affidavit may include any exhibits to explain or show the correction, including a marked-up copy of the corrected document. Registers would verify the notary certificate in the same manner as with any other affidavit. The subsection provides that if an affidavit is conspicuously identified as a "corrective" or "scrivener's" affidavit in its title, the register is required to index the affiant's name, the names of the original parties to the document, and the recording information for the document being described.

Subsections (d) and (e) make changes to the indexing statutes. There are many indexing statutes, not all of which provide registers with clear guidance about what is reasonable indexing. A strict interpretation of current law would seem to suggest that if a document is not indexed according to all applicable rules, it is not registered at all, which could significantly affect the rights of owners and creditors. The North Carolina courts have not taken such a strict approach. Rather, they have held that indexing is sufficient if a reasonably careful and prudent examiner would find the document in the index, even if the indexing does not technically comply with all the indexing rules. The language in this subsection adopts this judicial interpretation. These subsections make other clarifying changes to address inconsistencies in the statutes that have arisen over the years as the result of changes to parts of the statutes without corresponding changes to related statutes. Subsection (e) also reflects that, as of July 1, 2008, registers will no longer be required to maintain personal property indexes for UCC filings. It also repeals the Class 1 misdemeanor penalty for violations of the indexing statute.

Other than the repeal of G.S. 161-22(c) relating to the indexing of UCC filings, which becomes effective July 1, 2008, the remainder of this section becomes effective when the act becomes law.

MEDIATED SETTLEMENT CONFERENCE CHANGES

Section 8 of the PCS amends the statutes relating to a judge's authority to impose sanctions in the course of a mediated settlement conference. Mediated settlement conferences expedite the settlement of cases filed in district and superior court and before Clerks of Superior Court. Under current law, a judge may impose sanctions when a person required to attend a conference fails to appear without good cause. The revisions would broaden this language to allow sanctions to be imposed when a person who is required to attend fails to pay any or all of the mediator's or the neutral's fee.

This section would become effective January 1, 2009.

Background: These changes are being requested by the Dispute Resolution Commission. The Commission believes it is important that mediators be compensated for their services in order to retain high quality mediators. In an effort to keep mediation programs running smoothly, many judges are already imposing sanctions for failure to pay. This language would codify current practice.

EXTENSION FOR DPI REALIGNMENT OF BUDGETS

Section 9 of the PCS would extend by one year the period that the Department of Public Instruction (DPI) has to realign its budgets consistent with the reorganization of certain positions. In the 2007 Appropriations Act, the Department of Public Instruction was authorized to reorganize in accordance with a plan adopted by the State Board of Education. This authority expires on June 30, 2008. DPI reports that it has almost concluded this reorganization but needs some additional time to line up their budgets with positions that have moved or shifted. Section 9 would extend the time period by one year and would become effective June 30, 2008.

INCREASE DORMITORY CAPACITY FOR CERTAIN DETENTION FACILITIES

Section 10 of the PCS would authorize certain county detention facilities to increase dormitory capacity to up to 56 inmates notwithstanding the current rule that requires a capacity of no more than 40 inmates. This exception would apply only to those counties that have a population in excess of 600,000 according to the most recent decennial federal census.

Background: Wake and Mecklenburg are the two counties with populations meeting this criterion. Wake County is in the process of expanding the Hammond Road Detention Center and has proposed the construction of a 56-bed "direct supervision" housing unit. The current administrative rule, requiring a maximum of 40 inmates per dormitory, was adopted in 1991 prior to the use of the direct supervision

model. With the support of the sheriff, Wake County is seeking an exception to the rule for efficiency and cost savings.

DISCLOSURE OF RETIRED STATE, LOCAL AND PUBLIC SCHOOL EMPLOYEE INFORMATION

Section 11 of the PCS would authorize the Retirement Systems Division of the Department of the State Treasurer to disclose to domiciled nonprofit organizations that represent 2,000 or more active or retired State government, local government, or public school employees the names and mailing addresses of former:

- State employees
- Local government employees
- Public school employees
- Community college employees

Organizations that would be eligible to obtain information under this provision include the North Carolina Retired Governmental Employees' Association (NCRGEA), the State Employees Association of North Carolina (SEANC), and the North Carolina Association of Educators (NCAE).

Background: Personnel files of State and local government employees are confidential and cannot be released, except for certain items of information that must be maintained as separate public records. Similar statutes govern the personnel records of public school and community college employees. A personnel file consists of certain employment-related and personal information. "Personal information" includes an individual's home address, social security number, medical history, personal financial data, marital status, dependents, and beneficiaries.

Personnel files of *former* State employees who have been separated from State employment for 10 or more years are public, except for the following, which remain confidential:

- Documents relating to demotions.
- Documents relating to disciplinary actions resulting in dismissal.
- Personnel files maintained by the Retirement Systems Division of the Department of the State Treasurer.

Therefore, a State employee's address is confidential information even after separation from employment. Without the changes in Section 11, the State Treasurer does not have authority to release this information.

EFFECTIVE DATE: Except as otherwise provided, the PCS would be effective when it becomes law.

H0545e1-SMSV-CSSV-88

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 3

HOUSE BILL 1003*

Second Edition Engrossed 5/15/07

Senate Judiciary II (Criminal) Committee Substitute Adopted 6/4/08

Short Title: Aggravating Factor/No Probation Compliance. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S PRIOR WILLFUL FAILURES TO COMPLY WITH CONDITIONS OF RELEASE WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision during the 10-year period prior to the commission of the offense for which the defendant is being sentenced."

SECTION 2. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1003*

Second Edition Engrossed 5/15/07

Senate Judiciary II (Criminal) Committee Substitute Adopted 6/4/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H1003-CSST-114 [v.3]

6/21/2008 2:27:09 PM

Short Title: Probation Violation Changes. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COURT MAY CONSIDER A DEFENDANT'S PRIOR WILLFUL FAILURES TO COMPLY WITH CONDITIONS OF RELEASE WHEN PLACED ON SUPERVISED PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AS AN AGGRAVATING FACTOR AND TO PROVIDE THAT A COURT MAY EXTEND OR MODIFY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant willfully failed to comply with conditions of release when placed on supervised probation, parole, or post-release supervision during the 10-year period prior to the commission of the offense for which the defendant is being sentenced."

SECTION 2. G.S. 15A-1342(a) reads as rewritten:

"(a) Period. – The court may place a convicted offender on probation for the appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five years. The court may place a defendant as to whom prosecution has been deferred on probation for a maximum of two years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

Extension. – ~~The~~ In addition to G.S. 15A-1344, the court with the consent of the defendant may extend the period of probation beyond the original period (i) for the purpose of allowing the defendant to complete a program of restitution, or (ii) to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. The period of extension shall not exceed three years beyond the original period of probation. The special extension authorized herein may be ordered only in the

last six months of the original period of probation. Any probationary judgment form provided to a defendant on supervised probation shall state that probation may be extended pursuant to this subsection."

SECTION 3. G.S. 15A-1344 reads as rewritten:

"**§ 15A-1344. Response to violations; alteration and revocation.**

(a) Authority to Alter or Revoke. – Except as provided in subsection (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially.

(b) Limits on Jurisdiction to Alter or Revoke Unsupervised Probation. – If the sentencing judge has entered an order to limit jurisdiction to consider a sentence of unsupervised probation under G.S. 15A-1342(h), a sentence of unsupervised probation may be reduced, terminated, continued, extended, modified, or revoked only by the sentencing judge or, if the sentencing judge is no longer on the bench, by a presiding judge in the court where the defendant was sentenced.

(c) Procedure on Altering or Revoking Probation; Returning Probationer to District Where Sentenced. – When a judge reduces, terminates, extends, modifies, or revokes probation outside the county where the judgment was entered, the clerk must send a copy of the order and any other records to the court where probation was originally imposed. A court on its own motion may return the probationer to the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where probation was imposed or where the probationer resides for reduction, termination, continuation, extension, modification, or revocation of probation. In cases where the probation is revoked in a county other than the county of original conviction the clerk in that county must issue a commitment order and must file the order revoking probation and the commitment order, which will constitute sufficient permanent record of the proceeding in that court, and must send a certified copy of the order revoking probation, the commitment order, and all other records pertaining thereto to the county of original conviction to be filed with the original records. The clerk in the county other than the county of original conviction must issue the formal commitment to the North Carolina Department of Correction.

(d) Extension and Modification; Response to Violations. – At any time prior to the expiration or termination of the probation ~~period,~~ period or in accordance with subsection (f) of this section, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under

G.S. 15A-1342(a) and may modify the conditions of probation. The probation period shall be tolled if the probationer shall have pending against him criminal charges in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against him for violation of the terms of this probation. The hearing may be held in the absence of the defendant, if he fails to appear for the hearing after a reasonable effort to notify him. If a convicted defendant violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue him on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing, if any, or may order that charges as to which prosecution has been deferred be brought to trial; provided that probation may not be revoked solely for conviction of a Class 3 misdemeanor. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence, but the reduction shall be consistent with subsection (d1) of this section. A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period.

(d1) Reduction of Initial Sentence. – If the court elects to reduce the sentence of imprisonment for a felony, it shall not deviate from the range of minimum durations established in Article 81B of this Chapter for the class of offense and prior record level used in determining the initial sentence. If the presumptive range is used for the initial suspended sentence, the reduced sentence shall be within the presumptive range. If the mitigated range is used for the initial suspended sentence, the reduced sentence shall be within the mitigated range. If the aggravated range is used for the initial suspended sentence, the reduced sentence shall be within the aggravated range. If the court elects to reduce the sentence for a misdemeanor, it shall not deviate from the range of durations established in Article 81B for the class of offense and prior conviction level used in determining the initial sentence.

(e) Special Probation in Response to Violation. – When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody

of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first.

(e1) Criminal Contempt in Response to Violation. – If a defendant willfully violates a condition of probation, the court may hold the defendant in criminal contempt as provided in Article 1 of Chapter 5A of the General Statutes. A finding of criminal contempt by the court shall not revoke the probation. If the offender serves a sentence for contempt in a local confinement facility, the Department of Correction shall pay for the confinement at the standard rate set by the General Assembly pursuant to G.S. 148-32.1(a) regardless of whether the offender would be eligible under the terms of that subsection.

(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. 14-208.40(a)(1) or G.S. 14-208.40(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.

(f) Extension, Modification or Revocation after Period of Probation. – The court may extend, modify, or revoke probation after the expiration of the period of probation ~~if:~~if all of the following apply:

(1) Before the expiration of the period of probation the State has filed a written ~~motion~~ violation report with the clerk indicating its intent to conduct a ~~revocation hearing; and~~hearing on one or more violations of one or conditions of probation.

(2) The court finds that the ~~State has made reasonable effort to notify the probationer and to conduct the hearing earlier.~~probationer did violate the one or more conditions of probation prior to the expiration period of probation.

(3) The court finds for good cause shown and stated that the probation should be extended, modified, or revoked.

(4) If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under G.S. 15A-1342(a)."

SECTION 4. Section 1 of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date. Sections 2 and 3 of this act become

effective December 1, 2008, and apply to probation violation hearings on or after that date. The remainder of this act becomes effective December 1, 2008.

HOUSE BILL 1003:
Aggravating Factor/No Probation Compliance

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 21, 2008
Introduced by:	Reps. Johnson, Barnhart, Steen	**Summary by:**	Jeff Hudson
Version:	PCS to Third Edition H1003-CSST-114v3		Committee Counsel

SUMMARY: House Bill 1003 would provide that a court may consider a defendant's prior failure to comply with conditions of release when placed on supervised probation, parole, or post-release supervision as an aggravating factor for purposes of sentencing.

[As introduced, this bill was identical to S1461, as introduced by Sen. Hartsell, which is currently in Senate Judiciary II (Criminal).]

CURRENT LAW & BILL ANALYSIS:

Section 1. Structured sentencing applies to offenses committed on or after October 1, 1994. Under structured sentencing, a court must take the following steps to determine the appropriate sentence for felonies under structured sentencing:

- Determine the offense class.
- Determine the prior record level for the defendant.
- ***Consider aggravating and mitigating factors.***
- Select a minimum sentence from the applicable minimum sentence range.
- Determine the maximum sentence.
- Determine the sentence disposition (active, intermediate, or community).

The sentencing grid contains three ranges of punishment for felonies: presumptive, aggravated, and mitigated. To determine the range in which to sentence a defendant, the court must consider any evidence of aggravating and mitigating factors. The statutory aggravating factors are set out in G.S 15A-1340.16(d) (attached below). If the court finds that aggravating factors are present and outweigh any mitigating factors, it may depart from the presumptive range of punishment and impose a term of punishment from the aggravated range. Evidence necessary to prove an element of the offense can not be used to prove any factor in aggravation, and the same item of evidence can not be used to prove more than one factor in aggravation.

The proposed committee substitute for House Bill 1003 would provide that a court may consider a defendant's prior failure to comply with conditions of release when placed on supervised probation, parole, or post-release supervision as an aggravating factor for purposes of sentencing. The proposed committee substitute makes no changes to Section 1 from the 3rd edition of the bill.

Sections 2-3. After the period of probation has expired under the terms of the probation, a judge may only revoke probation according to G.S. 15A-1344(f). For the judge to have the authority to revoke probation, all of the following conditions must be met:

1. Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to conduct a revocation hearing.
2. The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier.

The proposed committee substitute would allow the court the authority to extend, modify or revoke probation if all of the following conditions are met:

1. Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or conditions of probation.
2. The court finds that the probationer did violate the one or more conditions of probation prior to the expiration period of probation.
3. The court finds for good cause shown and stated that the probation should be extended, modified, or revoked.
4. If the court opts to extend the period of probation, the court may extend the period of probation up to three years.

EFFECTIVE DATE:

House Bill 1003 would become effective December 1, 2007, and apply to offenses committed on or after that date.

Erika Churchill, Kory Goldsmith and Wendy Graf Ray, Staff Attorneys, substantially contributed to this summary.

H1003e3-SMST-CSST-114v3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1003*

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

H1003-ASB-29 [v.1]

Date: June 24 ,2008

Comm. Sub. [YES]
Amends Title [NO]
H1003-CSST-114 [v.3]

Senator Hunt Bell

moves to amend the bill on page 1, lines 8 through 14,
by rewriting those lines to read:

"**SECTION 1.** G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(12a) The defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration."

SECTION 2. G.S. 15A-1340.16(b) reads as rewritten:

"(b) When Aggravated or Mitigated Sentence Allowed. – If the jury, or with respect to an aggravating factor under ~~G.S. 15A-1340.16(d)(18a),~~G.S. 15A-1340.16(d)(12a) or (18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3)."

SECTION 3. G.S. 15A-1342(a) reads as rewritten:" and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1003*

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

H1003-ASB-29 [v.1]

By renumbering the subsequent Sections and cross references to Sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1549

Short Title:	Clarify Laws Governing Execution on Judgments.	(Public)
Sponsors:	Representatives McGee and Stam (Primary Sponsors).	
Referred to:	Judiciary II.	

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-313(1) reads as rewritten:

"**§ 1-313. Form of execution.**

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) Against ~~Property—~~property.

a. No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

b. Real or personal property required to satisfy the judgment is subject to execution regardless of whether the property is encumbered. However, any personal or real property sold under execution remains subject to all prior encumbrances, including liens, mortgages, deeds of trust, perfected security interests, and prior judgments which became effective prior to the lien of the judgment pursuant to which the execution sale is held, in the same manner and to the same extent as if no such sale had been held."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 2178*

Short Title:	Electronic Voting for Nonprofits.	(Public)
Sponsors:	Representative Ross.	
Referred to:	Judiciary I.	

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO ALLOW CERTAIN VOTES BY ELECTRONIC TRANSMISSION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-1-40 reads as rewritten:

"**§ 55A-1-40. Chapter definitions.**

In this Chapter unless otherwise specifically provided:

...

(9) "Effective date of notice" is defined in G.S. 55A-1-41.

(9a) 'Electronic' has the same meaning as in G.S. 66-312.

(9b) 'Electronic record' has the same meaning as in G.S. 66-312.

(9c) 'Electronic signature' has the same meaning as in G.S. 66-312.

(10) "Entity" includes:

a. Any domestic or foreign:

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

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

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

...

(26) "Vote" includes authorization by written ballot and written ~~consent.~~ consent, including electronic ballot and electronic consent."

SECTION 2. G.S. 55A-1-41 reads as rewritten:

"**§ 55A-1-41. Notice.**

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the member's address shown in the corporation's current record of members. To the extent the corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic corporation to its member in the form of an electronic record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A member may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

(e) Except as provided in subsection (c) of this section, written notice is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;

(5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who

have the same address, the corporation's bylaws may provide that a single notice may be given to such members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice."

SECTION 3. Article 1 of Chapter 55A of the General Statutes is amended by adding a new Part to read:

"Part 7. Miscellaneous.

"**§ 55A-1-70. Electronic transactions.**

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 4. G.S. 55A-7-04 reads as rewritten:

"**§ 55A-7-04. Action by written consent.**

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 5. G.S. 55A-7-08 reads as rewritten:

"**§ 55A-7-08. Action by written ballot.**

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with

information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked."

SECTION 6. G.S. 55A-7-24 reads as rewritten:

"**§ 55A-7-24. Proxies.**

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for ~~him~~ the member by signing an appointment form, either personally or by ~~his~~ the member's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies,~~ Without limiting G.S. 55A-1-70, an appointment in the form of an electronic record that bears the member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies ~~(i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii)~~ by any kind of ~~electronic or~~ telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or

incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 7. G.S. 55A-8-21 reads as rewritten:

"**§ 55A-8-21. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 8. This act becomes effective October 1, 2008.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 13, 2008

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **House Bill 2178 (Electronic Voting for Nonprofits)**

General Comments

This bill amends Chapter 55A of the General Statutes (North Carolina Nonprofit Corporation Act) to expressly permit nonprofit corporations incorporated in this State to send notices to members and accept votes and proxies from members electronically and to accept members' and directors' consents to action taken without meeting in which the consent is given electronically. The bill also establishes the method by which nonprofit corporations may agree to conduct transactions under Chapter 55A by electronic means.

The amendments in this bill parallel amendments made to Chapter 55 of the General Statutes (North Carolina Business Corporation Act) in 2001, so that this bill conforms Chapter 55A to Chapter 55 in this regard. The legislative staff summary for the part of the 2001 bill that made the amendments to Chapter 55 described the changes as "conforming changes for corporations to operate under the Uniform Electronic Transactions Act." The changes would allow a nonprofit corporation to send notices and to conduct votes of its members in a more efficient and cost-effective manner.

Specific Comments

Section 1 amends G.S. 55A-1-40 (Chapter definitions) to add three new definitions, "electronic," "electronic record," and "electronic signature," which are defined to be the same as the definitions of these terms in Article 40 of Chapter 66 of the General Statutes (Uniform Electronic Transactions Act). The section also amends the definition of "vote" to expressly include electronic ballots and electronic consents.

Section 2 amends G.S. 55A-1-41 (Notice) in three places. In subsection (b), the list of various methods of electronic communication (some now old-fashioned) is replaced with the term, "electronic means" ("electronic" being a newly-defined term). In subsection (c), which currently adopts the "mailbox rule" for paper notices sent by U.S. mail (effective when mailed, whether or not actually received), the amendment specifies that the nonprofit corporation and its member may agree to adopt the electronic equivalent of the "mailbox rule" for electronically transmitted notices and that the member may later terminate the agreement on a prospective basis. In subsection (e), a sentence is added providing that the time of receipt of an electronic notice is determined under G.S. 66-325 (in summary, when a message enters the recipient's processing system in a form capable of being processed by that system).

Section 3 adds a new Part 7 (Miscellaneous) to Article 1 of Chapter 55A, containing one new General Statutes section, G.S. 55A-1-70 (Electronic transactions). This new section

provides that for purposes of applying the Uniform Electronic Transactions Act (Article 40 of Chapter 66), a corporation may agree to conduct a transaction by electronic means in its articles of incorporation or bylaws or by action of its board of directors.

Section 4 amends G.S. 55A-7-04 (Action by written consent) in subsection (a) to allow a member to consent electronically to action taken without a meeting if the corporation has agreed as provided in (new) G.S. 55A-1-70.

Section 5 amends G.S. 55A-7-08 (Action by written ballot) in subsection (a) to expressly allow electronically transmitted ballots as long as the transmission includes information showing that the member authorized the electronic transmission.

Section 6 amends G.S. 55A-7-24 (Proxies) in subsection (a) to update the terminology and conform it more closely to the equivalent provisions of G.S. 55-7-22 (Proxies). G.S. 55A-7-24(a) currently allows a proxy to be a photocopy, telegram, cablegram, facsimile transmission, "equivalent reproduction of a writing," or an e-mail if permitted by the corporation. The statute also currently has a catch-all provision, subject to permission by the corporation, for any kind of electronic or telephonic transmission, even without a writing, if the corporation can tell that the member authorized the proxy. The amendment substitutes for the current lists language using the new defined term "electronic record." The amended language also requires that all proxies in the form of an electronic record have the member's electronic signature (also a new defined term) and be reproducible in paper form. The existing catch-all accordingly becomes limited to telephone transmissions only.

Section 7 amends G.S. 55A-8-21 (Action without meeting) in subsection (a) to allow a director to consent electronically to action taken without a meeting if the corporation has agreed as provided in (new) G.S. 55A-1-70. This amendment parallels the amendment in Section 4 to G.S. 55A-7-04 on members' consents to action taken without meeting.

Section 8 provides an effective date of October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2287*

Committee Substitute Favorable 5/28/08

Short Title: Service of Process/Electronic or Fax Receipt. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXPRESSLY AUTHORIZE THE USE OF ELECTRONIC OR FACSIMILE RECEIPTS UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE WHEN SERVICE OF PROCESS IS PROVIDED BY A DESIGNATED PRIVATE DELIVERY SERVICE, AND TO MAKE CONFORMING CHANGES REGARDING PROOF OF SERVICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j), reads as rewritten:

"(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in ~~subsection~~ subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the

addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. ~~Nothing in this sub-subdivision authorizes the use of electronic mailing for service on the party to be served.~~

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child; or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent

appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee,

and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested,

addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to

be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – ~~Service upon~~Upon a foreign state or a political subdivision, agency, or instrumentality ~~thereof shall be effected~~thereof, pursuant to 28 U.S.C. § 1608."

SECTION 2. G.S. 1A-1, Rule 4(j2), reads as rewritten:

"(j2) Proof of service. – Proof of service of process shall be as follows:

(1) Personal Service. – Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of ~~G.S. 1-75.10(1).~~G.S. 1-75.10(a)(1).

(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service

by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4), 1-75.10(5), or 1-75.10(6),~~G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. This affidavit together with the return ~~or delivery receipt or~~ receipt, copy of the proof of delivery provided by the United States Postal ~~Service~~ Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service.

(3) Publication. – Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with ~~G.S. 1-75.10(2).~~ G.S. 1-75.10(a)(2)."

SECTION 3. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(j6) Service by electronic mailing not authorized. – Nothing in subsection (j) of this section authorizes the use of electronic mailing for service on the party to be served."

SECTION 4. G.S. 1-75.10 reads as rewritten:

"**§ 1-75.10. Proof of service of summons, defendant appearing in action.**

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

...

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party ~~averring:~~averring all of the following:

a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt ~~requested;~~requested.

b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the ~~addressee; and~~addressee.

c. That the ~~genuine~~ delivery receipt or other evidence of delivery is attached.

....

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt."

SECTION 5. G.S. 1A-1, Rule 4(j1), reads as rewritten:

"(j1) Service by publication on party that cannot otherwise be served. – A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of ~~G.S. 1-75.10(2),~~G.S. 1-75.10(a)(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought;

(vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____COUNTY

In the _____ Court

[Title of action or special proceeding] [To Person to be served]:
Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, ____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:
(State nature.)

You are required to make defense to such pleading not later than (_____, ____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, ____

_____ (Attorney) (Party)
_____ (Address)"

SECTION 6. This act becomes effective October 1, 2008, and applies to receipts given on or after that date

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 13, 2008

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **HB 2287 (Service of Process/Electronic or Fax Receipt)**

General Comments

This bill amends Rule 4(j) of the Rules of Civil Procedure to expressly recognize the use of electronic or facsimile proof of delivery receipts when service of process is provided by designated delivery services, i.e., FedEx, UPS, and DHL. The bill makes technical and minor stylistic changes to Rule 4(j) and eliminates an ambiguity in Rule 4(j2)(2). Finally, the bill makes stylistic and conforming changes to G.S. 1-75.10 relating to proof of service of process.

Designated delivery services use electronic receipts, similar to the proof of delivery used in the U.S. Postal Service's signature confirmation service, or provide the sender with a facsimile receipt. The statutes currently allow a copy of the U.S. Postal Service's signature confirmation to be used for proof of delivery. This bill resulted from a report by a litigator who used a designated delivery service for service of process, as allowed by Rule 4, but then had a clerk of court reject a copy of the electronic receipt as proof of delivery.

Specific Comments

Section 1 amends G.S. 1A-1, Rule 4(j) to define "delivery receipt" in the context of a designated delivery service to include an electronic or facsimile receipt. Section 1 also makes technical and minor stylistic changes in Rule 4(j)(1) and Rule 4(j)(9). Sections 1 and 3 together eliminate any implication that the amendments in this bill authorize service of process by e-mail by moving the current prohibition against the use of electronic mailing for service of process from sub-subdivision (j)(1)e., relating to service of process by signature confirmation, to a new subsection (j6).

Section 2 amends G.S. 1A-1, Rule 4(j2)(2) to eliminate an ambiguity in the second sentence of the subdivision by clarifying that the language "provided by the United States Postal Service" does not modify "delivery" receipt and to expressly provide that the term "delivery receipt" includes an electronic or facsimile receipt provided by a designated delivery service. Section 2 also updates cross references to G.S. 1-75.10 as amended by Section 4.

Section 4 amends G.S. 1-75.10 to authorize the use of a facsimile delivery receipt or a printout of an electronic delivery receipt in proving service of process by a designated delivery service and makes minor stylistic changes, and Section 5 amends G.S. 1A-1, Rule 4(j1) to make a conforming cross reference to G.S. 1-75.10 as amended by Section 4.

Section 6, as amended by the House Judiciary I Committee, makes the bill effective October 1, 2008, applicable to receipts given thereafter.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1632*

Short Title:	2008 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

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. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 26, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 2390	Raise Ceiling on Personal Prop. Sale/Guardian.	Representative Bordsen Representative Pierce Representative Farmer-Butterfield Representative Goodwin
HB 2492	Amend Release of Juvenile Escape Info.	Representative Justus Representative Goforth Representative Sutton Representative Spear

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, June 26, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 2390	Raise Ceiling on Personal Prop. Sale/Guardian.	Representative Bordsen Representative Pierce Representative Farmer-Butterfield
HB 2492	Amend Release of Juvenile Escape Info.	Representative Goodwin Representative Justus Representative Goforth Representative Sutton Representative Spear

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 26, 2008

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

FAVORABLE

H.B. **2390** Raise Ceiling on Personal Prop. Sale/Guardian.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Thursday, June 26, 2008 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on June 26, 2008, in Room 1124 of the Legislative Building, with twelve members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Thomas Elmore, Levi Hergeth, T. J. Hoyt and Sean Corcoran and thanked them for serving.

Senator Hartsell noted that HB 2492 would not be heard due to having been moved to Senate J I Committee.

HB 2390 (Raise Ceiling on Personal Prop. Sale/Guardian.) Representative Goodwin was recognized to explain the bill. Questions from Senators Goodall and Jacumin were answered by Representative Goodwin and Representative Farmer-Butterfield. Senator Jones moved for a favorable report, all voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6/26/08

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Moore	Conf. of Clerks of Sup. Ct.
Cliff Venable	Govs Office
Christie Wunsche	SOS - Daily Bulletin
Jordan Schrader	press

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2390*
Second Edition Engrossed 6/18/08

Short Title:	Raise Ceiling on Personal Prop. Sale/Guardian.	(Public)
Sponsors:	Representatives Bordsen, Goodwin, Farmer-Butterfield, Pierce (Primary Sponsors); Boylan, Bryant, Carney, England, Fisher, Harrison, Hughes, Hurley, Johnson, Lucas, Underhill, and Wainwright.	
Referred to:	Judiciary III.	

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO RAISE THE CEILING ON THE TOTAL AMOUNT OF PERSONAL PROPERTY A GUARDIAN IS ALLOWED TO SELL WITHOUT A COURT ORDER UNDER THE LAWS PERTAINING TO GUARDIANSHIP, AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS AND THE STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1251(17)a. reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(17)a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order ~~over the duration of the estate shall not exceed one thousand five hundred dollars ($1,500).~~shall not exceed five thousand dollars ($5,000) per accounting period. When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed ~~one thousand five hundred dollars ($1,500),~~ five thousand dollars ($5,000) in the current

accounting period, a guardian may sell the item only as provided in subdivision (17)b.

...."

SECTION 2. G.S. 35A-1252(14)a. reads as rewritten:

"**§ 35A-1252. Guardian's powers in administering minor ward's estate.**

In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(14)a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order ~~over the duration of the estate shall not exceed one thousand five hundred dollars ($1,500).~~shall not exceed five thousand dollars ($5,000) per accounting period. When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed ~~one thousand five hundred dollars ($1,500),~~five thousand dollars ($5,000) in the current accounting period, a guardian may sell the item only as provided in subdivision (14)b.

...."

SECTION 3. This act is effective October 1, 2008.

HOUSE BILL 2390:
Raise Ceiling on Personal Prop. Sale/Guardian

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	June 25, 2008
Introduced by:	Reps. Bordsen, Goodwin, Farmer-Butterfield, Pierce	**Summary by:**	Ben Popkin Committee Counsel
Version:	Second Edition		

SUMMARY: ***House Bill 2390 increases the amount of personal property a guardian of an incompetent ward is allowed to sell without a court order.***

[As introduced, this bill was identical to S1750, as introduced by Sen. Malone, which is currently in Senate Finance.]

CURRENT LAW: Chapter 35A of the General Statutes contains the laws governing incompetence and guardianship.

G.S. 35A-1251 sets out a guardian's powers to administer an incompetent ward's estate. Among the powers set out in that section is the power to sell, lease or exchange up to $1500 of the ward's personal property without a court order over the duration of the estate.

G. S. 35A-1252 sets out a guardian's powers to administer an incompetent *minor* ward's estate. Among the powers set out in that section is the power to sell, lease or exchange up to $1500 of the minor ward's personal property without a court order over the duration of the estate.

BILL ANALYSIS: House Bill 2390 increases the amount of an incompetent ward's personal property a guardian may sell, lease or exchange without a court order to $5000 each accounting period, and $15,000 over the duration of the ward's estate.

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

BACKGROUND: This bill was recommended by the House Study Committee on State Guardianship Laws, and the Study Commission on Aging.

Giles Perry, counsel to House Judiciary III, substantially contributed to this summary.

H2390e2-SMRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2492
Committee Substitute Favorable 6/17/08

Short Title: Amend Release of Juvenile Escape Info. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS FOR RELEASE OF JUVENILE IDENTIFICATION UPON ESCAPE FROM CUSTODY AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3102 reads as rewritten:

"**§ 7B-3102. Disclosure of information about juveniles who escape.**

(a) Notwithstanding G.S. 7B-2102(d) or any other law to the contrary, within 24 hours of the time a juvenile escapes from custody the Department shall release to the public the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile ~~escaped;~~escaped, or if the juvenile's escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others, if:

(1) The juvenile escapes from a detention facility, or secure custody, and the juvenile ~~is alleged to have committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.~~has been adjudicated delinquent or is alleged to be delinquent.

(2) The juvenile escapes ~~from a youth development center, and the juvenile has been adjudicated delinquent for an offense that would be a felony or a Class A1 misdemeanor if committed by an adult.~~and the juvenile has been committed to the Department for placement in a youth development center in accordance with G.S. 7B-2513.

(b) When a juvenile escapes from a detention facility or secure custody, and the juvenile has been adjudicated ~~for an offense that would be a Class 1, 2, or 3 misdemeanor if committed by an adult,~~undisciplined, the Department may release to the public within 24 hours the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile escaped, or if the juvenile's

escape was not from an institution, the circumstances and location of the escape; and a statement, based on the juvenile's record, of the level of concern of the Department as to the juvenile's threat to self or to others. The provisions of this subsection shall also apply if the juvenile's parents or guardians request that the information be released or the Department determines that the escape presents a danger to the juvenile or to the public. The Department shall make a reasonable effort to notify the parents or guardians of the juvenile prior to release of the information to the public.

(c) If a juvenile subject to subsection (a) or (b) of this section is returned to custody before the disclosure required or permitted is made, the Department shall not make the disclosure.

(d) The Department shall maintain a photograph of every juvenile in its custody."

SECTION 2. This act becomes effective October 1, 2008.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 1, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, July 1, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee

Presentations

Other Business

Adjournment

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Tuesday, July 1, 2008 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on July 1, 2008, in Room 1124 of the Legislative Building, with ten members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

HB1549 (Clarify Laws Governing Execution on Judgments.) Senator Bingham moved to adopt the Proposed Committee Substitute for Representative McGee's bill. All voted and the motion carried. Senator Bingham explained the Proposed Committee Substitute. Senator Jacumin moved for a favorable report, unfavorable to the original bill. After much discussion, the Chair decided to hold the motion and hear the bill again at a later meeting.

There being no other business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 1, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Gheen	Intern for Senator Berger
Pete Jarvis	Gov. Office
BRUCE THOMPSON	ATTORNEY
Chris Biggett	NCMS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 1549

Short Title:	Clarify Laws Governing Execution on Judgments.	(Public)
Sponsors:	Representatives McGee and Stam (Primary Sponsors).	
Referred to:	Judiciary II.	

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-313(1) reads as rewritten:

"**§ 1-313. Form of execution.**

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) Against ~~Property~~ property.

a. No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

b. Real or personal property required to satisfy the judgment is subject to execution regardless of whether the property is encumbered. However, any personal or real property sold under execution remains subject to all prior encumbrances, including liens, mortgages, deeds of trust, perfected security interests, and prior judgments which became effective prior to the lien of the judgment pursuant to which the execution sale is held, in the same manner and to the same extent as if no such sale had been held."

SECTION 2. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1549
PROPOSED SENATE COMMITTEE SUBSTITUTE H1549-CSRI-44 [v.1]

6/30/2008 3:00:45 PM

Short Title: Amend Appt. Process for Auctioneers Comm'n. (Public)

Sponsors:

Referred to:

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCESS OF APPOINTMENTS TO THE NORTH CAROLINA AUCTIONEERS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85b-3(a) reads as rewritten:

"(a) There shall be a five-member North Carolina Auctioneers Commission having the powers and responsibilities set out in this Chapter. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, ~~shall~~ may be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one-year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified. No member shall serve more than two complete consecutive terms."

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

Principal Clerk _____
Reading Clerk _____

Corrected notice – Date corrected

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 3, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2338	Hospital Report Child Injuries.	Representative Earle Representative Clary Representative Weiss
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, July 3, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1549	Clarify Laws Governing Execution on Judgments.	Representative Stam Representative McGee
HB 2338	Hospital Report Child Injuries.	Representative Earle Representative Clary Representative Weiss
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Thursday, July 3, 2008 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on July 3, 2008, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages J. Simon, Cawood Simpson Brunstetter, Walker Flythe Brunstetter, Taylor Woolard, Alex Swain, Pierce Lynch and Stephanie Weinstein and thanked them for serving.

HB 2338 (Hospital Report Child Injuries.) Senator Purcell was recognized to explain the bill. Questions from Senators Goodall, Swindell, Kerr, and Jones were answered by Senator Purcell, Jennifer McGinnis, Staff Attorney, and Senator Hartsell. Mr. Jamal Jones, Director of Governmental Relations, North Carolina Hospital Association, and Lisa Mayhew, representing the Office of the Chief Medical Examiner, spoke in favor of the bill. Senator Atwater moved for a favorable report, all voted and the motion carried.

HB 1549 (Clarify Laws Governing Execution on Judgments.) The bill had been presented at the previous committee meeting with the adoption of a Proposed Committee Substitute. The Proposed Committee Substitute changed the name of the bill to Amend Appt. Process for Auctioneers Comm'n. Senator Bingham was recognized to explain the bill. Ms. Casandra White, representing the Governor's Office, and Mr. Keith Peirce, representing the Auctioneers * Association, gave additional explanation and comments. Questions from Senators Swindell, Goodall, Apodaca and Kerr were answered by Ms. White, Jennifer McGinnis, Staff Attorney and Mr. Pierce. Senator Jacumin moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 1632 (2008 Technical Corrections Act.) Senator Hartsell noted that no vote would be taken at this meeting. Senator East moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell and Jennifer McGinnis gave explanations and comments.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

* See Addendum

SENATE JUDICIARY II

Addendum to Minutes of July 3, 2008 meeting

This addendum is to clarify the misconception that Mr. Keith Peirce was representing the Auctioneers Association when he spoke at the Senate Judiciary II meeting on July 3, 2008. He spoke on the merits of the bill.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 03, 2008

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

FAVORABLE

H.B. **2338** Hospital Report Child Injuries.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, July 07, 2008

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

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

H.B. **1549** Clarify Laws Governing Execution on Judgments.

Draft Number:	51044
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II 1-3-08

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Crouch	NCDA
Bill Scoggin	KLG
Chip Baggett	NCMS
Tracy Kimbrell	Parker Poe
Andy Ellen	NCCU
Elizabeth Dutton	NCCU
Jamal Jones	NCHBA
Claire Hunter	MLVL
Christine Wunsche	SOG- Daily Bulletin
Lisa Martin	NC HBA
David McGowan	NC Realtors

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Doyle	NCPAPA
Charles Francis	Intern - Sen. Bingham
Keith J. Pierce	Pierce Auction Service and Real Estate Supports Bill by Sen. Stan Brigham
Forrest A. Mendenhall	Mendenhall Auction Company Support Bill By Sen. Stan Brigham High Point, NC
LLOYD MICKEY MEEKINS JR	LLOYD MEEKINS & Son Auction Co LUMBERTON NC NCLN 228 Appointed By Dave Hunter
Henry Jones	Attorney - Raleigh
[illegible]	[illegible]
Selena Childs	CFTE
Michael Honsor	NCDOR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

HOUSE BILL 1549
PROPOSED SENATE COMMITTEE SUBSTITUTE H1549-CSRI-44 [v.1]

6/30/2008 3:00:45 PM

Short Title: Amend Appt. Process for Auctioneers Comm'n. (Public)

Sponsors:

Referred to:

April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCESS OF APPOINTMENTS TO THE NORTH CAROLINA AUCTIONEERS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85b-3(a) reads as rewritten:

"(a) There shall be a five-member North Carolina Auctioneers Commission having the powers and responsibilities set out in this Chapter. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, ~~shall~~ may be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one-year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified. No member shall serve more than two complete consecutive terms."

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

HOUSE BILL 2338*

Short Title:	Hospital Report Child Injuries.	(Public)
Sponsors:	Representatives Weiss, Clary, Earle (Primary Sponsors); Alexander, Brisson, Coleman, Faison, Glazier, Harrison, Insko, Pierce, and Wainwright.	
Referred to:	Children, Youth and Families, if favorable, Judiciary II.	

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HOSPITALS AND PHYSICIANS TO REPORT SERIOUS, NON-ACCIDENTAL TRAUMA INJURIES IN CHILDREN TO LAW ENFORCEMENT OFFICIALS, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.20 reads as rewritten:

"Article 1C.

Physicians and Hospital Reports.

§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning,

every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(c1) In addition to the reporting requirements of subsection (b) of this section, cases involving recurrent illness or serious physical injury to any child under the age of 18 years where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma shall be reported by the physician as soon as it becomes practicable before, during, or after completion of treatment. If the case is treated in a hospital, sanitarium, or other medical institution or facility, the report shall be made by the Director, Administrator, or other person designated by the Director or Administrator of the medical institution or facility, or if the case is treated elsewhere, the report shall be made by the physician or surgeon treating the case to the chief of police or the police authorities of the city or town in this State in which the hospital or other institution or place of treatment is located. If the hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of the sheriff's deputies. This reporting requirement is in addition to the duty set forth in G.S. 7B-301 to report child abuse, neglect, dependence, or the death of any juvenile as the result of maltreatment to the director of the department of social services in the county where the juvenile resides or is found.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report."

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

HOUSE BILL 2338:
Hospital Report Child Injuries

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 2, 2008
Introduced by:	Reps. Weiss, Clary, Earle	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 2338 would amend existing law requiring physicians and hospitals to report certain cases of wounds, injuries and illnesses to law enforcement agencies to specify that "cases involving recurrent illness or serious physical injury to any child under the age of 18 years old where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma" shall be reported to law enforcement.

[As introduced, this bill was identical to S1733, as introduced by Sen. Purcell, which is currently in Senate Health Care.]

CURRENT LAW: Two existing sections of the General Statutes require that certain types of injuries be reported to either County Departments of Social Services or local law enforcement agencies.

- **G.S. 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.** This statute directs, "any person or institution who has cause to suspect that any juvenile is abused, neglected...or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found."
- **G.S. 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.** This statute directs the treating physician or surgeon, or the director, administrator or designated person of a facility in which a person is treated, to contact the appropriate local law enforcement agency of cases of the following types of wounds, injuries or illnesses: "...every case of a bullet wound, gunshot wound...every case of illness apparently caused by poisoning, every case of a wound or injury caused...by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that the wound...resulted from a criminal act of violence, and every case...in which there is grave bodily harm or grave illness if it appears...that the wound...resulted from a criminal act of violence."

BILL ANALYSIS: House Bill 2338 would add a new subsection (c1) to G.S. 90-21.20 to specify that in addition to the existing reporting requirements (detailed in second bullet point, above), the parties listed (physician, administrator, etc.) shall report to the appropriate law enforcement agency any, "...cases involving recurrent illness or serious physical injury to any child under the age of 18 years old where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma...". This new subsection specifies that this requirement to report to law enforcement is in addition to the existing requirement to report to the director of the county department of social services set forth in G.S. 7B-301 (detailed in first bullet point, above).

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

Heather Fennel, Counsel to House Judiciary II, and Ben Popkin, Counsel to House Children, Youth and Families and Senate Judiciary II, substantially contributed to this summary.

H2338e1-SMRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1632*

Short Title:	2008 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

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. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1632*
PROPOSED COMMITTEE SUBSTITUTE S1632-CSRI-46 [v.1]

7/2/2008 2:26:16 PM

Short Title: 2008 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 19, 2008

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.

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SECTION 2.(a) G.S. 32A-25.1 reads as rewritten:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the

use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent ***broad powers*** *to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent(s) to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____

Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ *(Physician)*

2. _____ *(Physician)*

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section ~~6~~5 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

_____ *(Initial)*

shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____ *(Initial)*

shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

_____ *(Initial)*

B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or

discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem

appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____ *(Initial)* donate any needed organs or parts; or

_____ *(Initial)* donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____ *(Initial)* donate my body for anatomical study if needed.

_____ *(Initial)* In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any adult care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of signer)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date: _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 2.(b) G.S. 90-21.13(c) reads as rewritten:

"(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. ~~32A-19(b)~~ 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age;

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes."

SECTION 3.(a) G.S. 14-71(b) reads as rewritten:

"(b) If a person knowingly receives or possesses property in the custody of a law enforcement agency that was explicitly represented to the person by an agent of the law enforcement agency or a person authorized to act on behalf of a law enforcement agency as stolen, the person is guilty of a Class H felony and may be indicted, tried, and punished in any county in which the person received or possessed the property."

SECTION 3.(b) G.S. 14-72.11 reads as rewritten:

"**§ 14-72.11. Larceny from a merchant.**

A person is guilty of a Class H felony if the person commits larceny against a merchant under any of the following circumstances:

(1) If the property taken has a value of more than two hundred dollars ($200.00), by using an exit door erected and maintained to comply with the requirements of ~~29 C.F.R. § 1910 Subpart E,~~ 29 C.F.R. § 1910.36 and 29 C.F.R. § 1910.37 upon which door has been placed a notice, sign, or poster providing information about the felony offense and punishment provided under this subsection, to exit the premises of a store.

(2) By removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

(3) By affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(4) When the property is infant formula valued in excess of one hundred dollars ($100.00). As used in this subsection, the term "infant formula," has the same meaning as found in 21 U.S.C. § 321(z)."

SECTION 3.(c) G.S. 14-86.6 reads as rewritten:

"**§ 14-86.6. Organized retail theft.**

(a) A person is guilty of a Class H felony if the person:

(1) Conspires with another person to commit theft of retail property from ~~a~~ retail ~~establishment,~~ establishments, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

(2) Receives or possesses any retail property that has been taken or stolen in violation of subdivision (1) of this subsection while knowing or having reasonable grounds to believe the property is stolen.

(b) Any interest a person has acquired or maintained in violation of this section shall be subject to forfeiture pursuant to the procedures for forfeiture set out in G.S. 18B-504."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 10, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1632	2008 Technical Corrections Act.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Thursday, July 10, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1632	2008 Technical Corrections Act.	Senator Hartsell
SB 1860	Amend Child Abuse/Child Fatality Task Force.	Senator Allran

Presentations

Other Business

Adjournment

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Thursday, July 10, 2008 at 10:00 AM
Room 1124,

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on July 10, 2008, in Room 1124 of the Legislative Building with eleven members of the committee present. Senator Austin Allran, Vice-Chairman, presided in the absence of Senator Fletcher L. Hartsell, Jr., Chairman.

Senator Allran recognized pages Jennie Kimel, Lacy Nance and Sarah Miller and thanked them for their service.

SB 1860 (Amend Child Abuse/Child Fatality Task Force.) As this was Senator Allran's bill, he requested that Senator Jones, Vice-Chairman, preside. Senator East moved to accept the bill for explanation. All voted and the motion carried. Senator Allran explained the bill and Senator East moved for concurrence. All voted and the motion carried.

SB 1632 (2008 Technical Corrections Act.) Senator Allran noted that the committee would not take a vote on the bill at this meeting. He then recognized Ms. Kara McCraw, Staff Attorney, to explain the bill. Ms. Bly Hall, representing the General Statutes Commission, gave additional explanation. Ms. Hall answered a question from Senator East. Mr. Joseph Finarelli, Assistant Attorney General, representing the Department of Corrections spoke in favor of the bill. The bill will be heard again at a later meeting.

There being no further business, the meeting was adjourned.

Austin M Allran, Vice-Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 10, 2008

Senator Edward Jones,
submits the following with recommendations as to passage:

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **1860** Amend Child Abuse/Child Fatality Task Force.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 10, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill O'Donnell	NCSSA
Sara Riggins	NCPOL
Alice Garland	NCEL
ANTHONY ALLEN	NCAOC
Jon Blackburn	NC Association of County Commissioners
[illegible]	NCAM
[illegible]	[illegible]
Barbara Conaldi	[illegible]
David Crawford	AIA NC
Jane Smith	DHHS
[illegible]	-

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCICU
John Bowdish	AstraZeneca
AL DEITCH	DOA/YAIB
Tom VITALLIONC	CFTF
Selena Childs	CFTF
Penny Griffin	IOG.
Claire Hunter	NWC
Michelle Frazier	MFS
P. Sky Hall	General Statutes Commission
Laura Parker	NC Conference of DAs

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Munn	REBIC
Cady Thomas	NCAR
Tim Work	NCBA
Al Ripley	NC Justice Ctr
Chris Kukla	CCL
Joseph Finarelli	DOJ
Tim Moore	DOC - DCC
Ted Boone	Boone & Assoc.
Andrew Cagle	Sen. Tillman
Rose Williams	NC DOI
Elizabeth Dalton	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S 1

SENATE BILL 1632*

Short Title:	2008 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

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. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

SECTION 2. 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 II Committee

FROM: General Statutes Commission

DATE: July 10, 2008

RE: SB 1632 (2008 Technical Corrections Act)

General Comments

Part I of this bill (Sections 1 through 33) contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments correct typographical errors, delete obsolete references, update names and statutory references and correct terminology, make conforming changes, including stylistic conforming changes, correct redlining errors, correct obvious drafting errors, insert subsection catchlines as needed for stylistic consistency, change language to be gender neutral, and resolve codification problems. Part II of this bill contains additional provisions that did not come from the General Statutes Commission.

Specific Comments

Section 1. This section amends G.S. 1-75.4(6) to add a missing "or." G.S. 1-75.4(6) was amended by S.L. 2007-351, s. 2, to add a new sub-subdivision d.; the amendment did not include an "or" to go between existing sub-subdivision c. and the new sub-subdivision.

Section 2. This section amends G.S. 7A-177(b) to delete a superfluous preposition. G.S. 7A-177(b) was amended by two different acts last year (S.L. 2007-393, s. 15, and S.L. 2007-484, s. 25.5). Among other things, each act added what was intended to be the same new introductory phrase to G.S. 7A-177(b). One act, however, inserted "in subsection (a)" while the other inserted "under subsection (a)." One of the two prepositions should be deleted, and "under" is more consistent with the style used in this State's statutes.

Section 3. This section amends G.S. 7A-498.8(b) to insert a word ("other") that was included in subdivision (7) but not underlined when G.S. 7A-498.8(b) was amended last year to add subdivision (6a).

Section 4. This section amends G.S. 7A-796(19) to make a conforming change by deleting a reference to repealed G.S. 7A-798 and to update a working title. G.S. 7A-798, repealed last year, dealt with grants that are no longer being made. It required grant applications to name a local program director; it did not authorize the creation of that position. There is no substitute statutory provision, so the reference to G.S. 7A-798 should be deleted. In addition, the Commission is informed by the Administrative Office of the Courts that the current working title for the position is "local drug treatment coordinator" and that some judicial districts have more than one.

Section 5. This section amends G.S. 14-208.41(b) to delete now-extraneous references to (i) the Department of Corrections ordering a defendant to enroll in GPS monitoring and (ii) a GPS monitoring period specified by the Department. These references were added to G.S. 14-208.41(b) by S.L. 2007-213, s. 13.

S.L. 2007-213 amended the statutes on GPS monitoring of certain sex offenders. Among other things, the session law added G.S. 14-208.40A, 14-208.40B, and 14-208.40C. In earlier versions of S.L. 2007-213, G.S. 14-208.40B would have provided that when a defendant met the pertinent criteria for GPS monitoring but the court at defendant's sentencing did not make a determination on that issue and order monitoring, the Department was to do it. As ultimately enacted, however, G.S. 14-208.40B provides for the Department to refer the matter back to the court, which then makes the necessary findings and orders. The amendments to G.S. 14-208.41(b) that were made by S.L. 2007-213 appear to have been conforming amendments to the earlier version of G.S. 14-208.40B that should have been taken out when G.S. 14-208.40B was changed to its current form. Under S.L. 2007-214 as enacted, the Department does not in fact order a defendant to enroll in a GPS monitoring program or specify the period of time.

Section 6. This section amends G.S. 18B-902(h) to add a subsection catchline. The subsection was added last year by S.L. 2007-402, s. 2(b), which did not provide a catchline for the subsection. Every other subsection in G.S. 18B-902 has a subsection catchline, and one should be included in subsection (h) for stylistic consistency.

Section 7. This section makes the same amendment to G.S. 18B-903(b2) that the preceeding section made to G.S. 18B-902(h); it adds a subsection catchline. Subsection (b2) was added last year by S.L. 2007-402, s. 2(c), which did not provide a catchline for the subsection. Every other subsection in G.S. 18B-903 has a subsection catchline, and one should be included in subsection (b2) for stylistic consistency.

Section 8. This section amends G.S. 19A-62(c) to add a subsection catchline for consistency with the style of the rest of G.S. 19A-62.

Section 9. This section amends G.S. 20-19(e) to correct the codification. After amendment last year, this subsection has three numbered lists in the same subsection. Two of them are blocked as subdivisions with subdivision numbering. As a result, subsection (e) has two subdivision (1)s and two subdivision (2)s, which can make citing to those subdivisions difficult.

The amendments in this section break subsection (e) into four subsections. As amended, (i) subsection (e) itself contains the basic provision on permanent license revocation, (ii) new subsection (e1) contains the first exception to the basic provision, (iii) new subsection (e2) contains the second exception to the basic provision, and (iv) new subsection (e3) contains the authority of the Division of Motor Vehicles to place conditions on license restorations under either of the exceptions. The amendments also make the language gender-neutral and the style of the subdivision punctuation consistent.

Section 10. This section amends G.S. 20-38.7 in subdivision (d)(1) to correct terminology by changing "vacated judgment" to "vacated sentence." Under G.S. 20-38.7, when a defendant appeals an implied-consent offense to superior court, defendant's sentence is what is vacated. If the appeal is withdrawn or the case is remanded back to district court, guilt/innocence is not relitigated and the District Court only resentences the defendant.

Section 11. This section amends G.S. 20-171.21 to correct the terminology by changing the word "fine" to "penalty." This section deals with infractions; the correct term is "penalty" rather than "fine."

Section 12. This section amends G.S. 58-24-185(a) to move the conjunction "or" to its correct location. G.S. 58-24-185(a) contains a list of subdivisions with each subdivision in the list separated by semi-colons; the conjunction "or" should be located between the next-to-last and last subdivision. The conjunction is currently located between subdivision (4) and subdivision (5). Last year, S.L. 2007-27 added subdivision (6) but did not move the conjunction.

Section 13. This section amends G.S. 58-84-35 to update the reference to the Firemen's Relief Fund in subdivision (6) to be a reference to the Firefighters' Relief Fund. The name of the Fund was changed to the "Firefighters' Relief Fund" last year in S.L. 2007-246. That session law made a conforming change in subdivision (5) of G.S. 58-84-35 but failed to update the reference in subdivision (6).

Section 14. This section amends G.S. 90-18.5(b)(2) to correct a citation. G.S. 90-18.5 was enacted last year by S.L. 2007-146, which also amended G.S. 90-11 to add a new subsection (a1), setting the criteria for licensure as an anesthesiologist assistant. This new subsection (G.S. 90-11(a1)) is cited in G.S. 90-18.5(b)(2). Later in the 2007 session, however, the article on the practice of medicine (Article 1 of Chapter 90 of the General Statutes) was substantially reorganized by S.L. 2007-346, which repealed the G.S. 90-11(a1) enacted by S.L. 2007-146 and enacted a new G.S. 90-9.4, containing substantially the same language. S.L. 2007-346 failed to make a conforming change to G.S. 90-18.5 to change the citation to G.S. 90-11(a1) to a citation to G.S. 90-9.4. This section makes that change.

Section 15. This section amends G.S. 105-163.9 to correct a redlining error by removing a duplicative "G.S." G.S. 105-163.9 was amended by S.L. 2007-491, s. 18, to, among other things, replace a citation to G.S. 105-266 with a citation to G.S. 105-241.6. In the process, the letters "G.S." in the citation being deleted were not stricken through.

Section 16. This section amends G.S. 105-249.2(b) to correct a citation to G.S. 105-236(2), (3), and (4), which should now be to G.S. 105-236(a)(2), (3), and (4). In 2006, G.S. 105-236 was amended by S.L. 2006-162 to designate the then-existing portion of G.S. 105-236 as subsection (a) and add additional subsections. As a result, G.S. 105-236(2), (3), and (4) became G.S. 105-236(a)(2), (3), and (4), and the citation to them in G.S. 105-249.2 needs to be conformed.

Section 17. This section amends G.S. 108A-25.2 to delete an extra "and" that resulted from a redlining error in S.L. 2007-97, s. 4. S.L. 2007-97 changed the name of the food stamp program and made some additional changes to terminology associated with that program. When S.L. 2007-97, s. 4, changed the phrase "and food stamp program" in the introductory language of G.S. 108A-25.2 to "and the food and nutrition services program," it inserted the word "and" in front of "food and nutrition services program" but did not strike through the word "and" that was in front of "food stamp program," which resulted in the extra "and."

Section 18. This section amends G.S. 108A-53(a) to insert the word "food" in the phrase "electronic and nutrition benefit." The word was inadvertently omitted when the term "food stamps or authorization cards" was updated in S.L. 2007-97 (the updated term is "electronic food and nutrition benefit").

Section 19. This section amends G.S. 115C-366(a3)(1) to move the conjunction "or" to its proper place between the next-to-last and last subdivisions, which was not done when sub-subdivision g. was added to the end of G.S. 115C-366(a3)(1) by S.L. 2007-283.

Section 20. This section amends G.S. 120-103.1(i)(3)b. to remove the now-extraneous word "legislator."

G.S. 120-103.1(i)(3) was amended by S.L. 2007-348, s. 3. In sub-subdivision b., the session law replaced a requirement for hearings to be closed unless the affected legislator requested that they be open with a requirement for hearings to be open unless certain exceptions apply. The base text for sub-subdivision b. that was used in the session law, however, incorrectly referred to and deleted the term "public servant" instead of "legislator." As a result, the word "legislator" was not deleted and remains in the sub-subdivision as "garbage language."

Section 21. This section amends G.S. 138A-12(f) to correct a typographical error. The phrase "under subsection (b) **if** this section" should read "under subsection (b) **of** this section" (italics added).

Section 22. This section amends G.S. 143-652.2(g) to delete the word "reenacted." G.S. 143-652.2 was enacted last year in S.L. 2007-528. It is not a reenactment, and the word "reenacted" is therefore incorrect. There used to be a North Carolina Boxing Commission, created under former G.S. 143-652, which was repealed by S.L. 2004-124, s. 18.2. Although former G.S. 143-652 may well have been a model for G.S. 143-652.2 (which creates the Boxing Advisory Commission), S.L. 2007-528 enacted a new section of the General Statutes; the session law did not reenact G.S. 143-652.

Section 23. This section amends G.S. 143-722(b) to correct a typographical error in a citation. There is no G.S. 143-6-14; the correct citation is to G.S. 143C-6-14.

Section 24. This section amends G.S. 143A-44.1 to correct a typographical error in a citation. The correct citation should be to Article IX of the North Carolina Constitution, which provides for the appointment of the State Board of Education. Article IV, Section 4(1), the incorrect reference, deals with the jurisdiction of the North Carolina Supreme Court.

Section 25. This section amends G.S. 143B-139.5B to update an acronym for the former Division of Facility Services, changing "DFS" to read "DHSR" in two places. S.L. 2007-182 changed the name of the Division from "Division of Facility Services" to "Division of Health Service Regulation."

Section 26. Subsection (a) of this section makes a codification correction; it recodifies G.S. 143B-437.11 as G.S. 143B-437.012. G.S. 143B-437.11 was enacted last year in S.L. 2007-552, which assigned it its code number but directed that the new statute be placed in Part 2 of Article 10 of Chapter 143B of the General Statutes. The code number assigned is not in Part 2 of Article 10 of Chapter 143B; it is in Part 2B. To place the statute in the intended Part, it needs to be recodified.

Subsection (b) makes a conforming amendment to G.S. 150B-1(d)(18), which contains a reference to G.S. 143B-437.11.

Section 27. This section amends the catchline of G.S. 143D-8 to correct an obvious drafting error by changing "Internet control documentation" to read "Internal control documentation." G.S. 143D-8 has nothing to do with the Internet but contains requirements relating to State agencies' documentation of their internal control system.

Section 28. This section amends G.S. 147-86.30(c) to delete a "garbage language" reference to G.S. 143C-9-3. G.S. 147-86.30(c) was rewritten by S.L. 2004-179, s. 1.3. In the process, the revision deleted a citation to former G.S. 143-16.4, which was in the Executive Budget Act. In 2006, the Executive Budget Act was repealed by S.L. 2006-203 and replaced with Chapter 143C of the General Statutes (the State Budget Act). S.L. 2006-203, s. 122, amended G.S. 147-86.30(c) in an attempt to change the citation to former G.S. 143-16.4 to the appropriate section in Chapter 143C, using the pre-2004 version of G.S. 147-86.30(c) as the base text that was being amended. Because of the 2004 amendment, however, the citation to former G.S. 143-16.4 was no longer present in G.S. 147-86.30(c), so the 2006 amendment merely added an unnecessary reference to G.S. 143C-9-3 that lacks context.

Section 29. This section amends G.S. 163-278.27(a1) to correct a typographical error in a citation. There is no G.S. 278.32; the correct reference is to G.S. 163-278.32.

Section 30. This section amends the introductory language of S.L. 2007-177, s. 3, to correct a typographical error in the identification of the statute that the session law intended to amend. The introductory language of S.L. 2007-177, s. 3, stated that it was amending "G.S. 122C-430.30". There is no G.S. 122C-430.30, and the intended reference was to G.S. 122C-430.

Section 31. This section amends the introductory language of S.L. 2007-318, s. 2, to correct a typographical error in the identification of the statute that the session law intended to amend. The introductory language of S.L. 2007-318, s. 2, stated that it was amending "G.S. 105-153A-155(g)". There is no G.S. 105-153A-155; the intended reference was to G.S. 153A-155(g).

Section 32. This section amends Section 44 of S.L. 2007-348 to correct an obvious drafting error. S.L. 2007-348 made various amendments to the State Government Ethics Act. Section 44 is the effective date section for S.L. 2007-348. Section 44 contained two different effective dates for Section 34 of the bill, providing for it to become effective on October 1, 2007, in one sentence and on January 1, 2008, two sentences further on. It appears that the January 1, 2008, date was the intended one (Section 34 amended G.S. 138A-24 dealing with the contents of a statement of economic interest).

Section 33. This section corrects obvious drafting errors in two sections of S.L. 2007-391. Subsection (a) amends S.L. 2007-391, s. 1(c), to change "act" to "section." Section 1(c) is an effective date provision for Section 1 of S.L. 2007-391; it was not intended to be the effective date section for the entire act. Subsection (b) amends S.L. 2007-391, s. 6(f), which is an effective date provision for Section 6 of S.L. 2007-391, to correct the references to "Subsections 7(b) through 7(e) of this section" to read "Subsections 6(b) through 6(e) of this section."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1632*
PROPOSED COMMITTEE SUBSTITUTE S1632-CSRN-25 [v.26]

7/9/2008 10:20:17 PM

Short Title: 2008 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE VARIOUS OTHER TECHNICAL CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CHANGES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 1. G.S. 1-75.4(6) reads as rewritten:

"(6) Local Property. – In any action which arises out of:

a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it; or

d. A claim related to a loan made in this State or deemed to have been made in this State under G.S. 24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and

regardless of whether the loan payment or fee is received through a loan servicer, provided that: (i) the loan was made to a borrower who is a resident of this State, (ii) the loan is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust on real property situated in this State upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families."

SECTION 2. G.S. 7A-177(b) reads as rewritten:

"(b) In addition to the basic training course required ~~in~~ under subsection (a) of this section, continuing education courses shall be provided at such times and locations as necessary to assure that they are conveniently available to all magistrates without extensive travel to other parts of the State."

SECTION 3. G.S. 7A-498.8(b) reads as rewritten:

"(b) The appellate defender shall perform such duties as may be directed by the Office of Indigent Defense Services, including:

(1) Representing indigent persons subsequent to conviction in trial courts. The Office of Indigent Defense Services may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, assign appeals, or authorize the appellate defender to assign appeals, to a local public defender's office or to private assigned counsel.

(2) Maintaining a clearinghouse of materials and a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.

(3) Providing continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, including capital cases, as resources are available.

(4) Providing consulting services to attorneys representing defendants in capital cases.

(5) Recruiting qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.

(6) In the appellate defender's discretion, serving as counsel of record for indigent defendants in capital cases in State court.

(6a) In the appellate defender's discretion, serving as counsel of record for indigent defendants in the United States Supreme Court pursuant to a petition for writ of certiorari of the decision on direct appeal by a court of the North Carolina Appellate Division.

(7) Undertaking <u>other</u> direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded."

SECTION 4. G.S. 7A-796(19) reads as rewritten:

"(19) ~~The local program director provided for in G.S. 7A-798; and~~Any local drug treatment coordinator; and"

SECTION 5. G.S. 14-208.41(b) reads as rewritten:

"(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or ~~required by the Department pursuant to~~ G.S. 14-208.40B 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 or the period of time specified by the Department.~~court."

SECTION 6. G.S. 18B-902(h) reads as rewritten:

"(h) Recycling Plan Required. - Each applicant for an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall prepare and submit with the application a plan for the collection and recycling of all recyclable beverage containers of all beverages to be sold at retail on the premises."

SECTION 7. G.S. 18B-903(b2) reads as rewritten:

"(b2) Recycling Plan Required. - Each person holding an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall submit, along with the annual registration or renewal application, a current plan for the collection and recycling of all recyclable beverage containers of all beverages sold at retail on the premises."

SECTION 8. G.S. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

SECTION 9. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which ~~he~~ the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which ~~his~~ the person's license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent. ~~The~~

(e1) Notwithstanding subsection (e) of this section, the Division ~~may, however,~~ may conditionally restore the ~~person's~~ license of a person to whom subsection (e) applies after it has been revoked for at least three years under ~~this~~ subsection (e) if ~~he~~ the person provides the Division with satisfactory proof ~~that:~~of all of the following:

(1) In the three years immediately preceding the person's application for a restored license, ~~he~~ the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or ~~drugs; and~~drugs.

(2) ~~He~~ The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance.

(e2) Notwithstanding subsection (e) of this section, the~~The~~ Division may conditionally restore the ~~person's~~ license of a person to whom subsection (e) applies after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof ~~that:~~of all of the following:

(1) ~~He~~ The person has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Department of Correction.

(2) ~~He~~ The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) ~~He~~ The person is not currently an excessive user of drugs or prescription drugs.

(4) ~~He~~ The person is not unlawfully using any controlled substance.

(e3) If the Division restores ~~the~~ a person's ~~license,~~license under subsection (e1) or (e2) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration."

SECTION 10. G.S. 20-38.7(d) reads as rewritten:

"(d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:

(1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated ~~judgment,~~ sentence, and

(2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.

A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal."

SECTION 11. G.S. 20-171.21 reads as rewritten:

"Any person violating any of the provisions of this Part shall be responsible for an infraction and may be subject to a ~~fine~~ penalty of not more than two hundred dollars ($200.00)."

SECTION 12. G.S. 58-24-185(a) reads as rewritten:

"(a) Nothing contained in this Article shall be so construed as to affect or apply to:

(1) Grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;

(2) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and

their families, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than five hundred dollars ($500.00) or disability benefits of not more than three hundred fifty dollars ($350.00) to any person in any one year, or both;

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than five hundred dollars ($500.00) or for disability benefits of not more than three hundred fifty dollars ($350.00) to any one person in any one year, or both; ~~or~~

(5) An association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars ($500.00) to any one person, provided, that the Commissioner may authorize the payment of death benefits not exceeding three thousand dollars ($3,000) to any one person, or may authorize disability benefits not exceeding three hundred dollars ($300.00), or may authorize both payments, in any one year to any one ~~person.~~person; or

...."

SECTION 13. G.S. 58-84-35(6) reads as rewritten:

"(6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the ~~Firemen's Relief Fund~~ Firefighters' Relief Fund as set forth in Article 85 of this Chapter."

SECTION 14. G.S. 90-18.5(b) reads as rewritten:

"(b) Anesthesiologist assistants are authorized to provide anesthesia services under the supervision of an anesthesiologist licensed under Article 1 of this Chapter under the following conditions:

(1) The North Carolina Medical Board has adopted rules governing the provision of anesthesia services by an anesthesiologist assistant consistent with the requirements of subsection (c) of this section.

(2) The anesthesiologist assistant holds a current license issued by the Board or is a student anesthesiologist assistant participating in a training program leading to certification by the National Commission for Certification of Anesthesiologist Assistants and licensure as an anesthesiologist assistant under ~~G.S. 90-11(a1).~~G.S. 90-9.4."

SECTION 15. G.S. 105-163.9 reads as rewritten:

"§ 105-163.9. (Effective January 1, 2008) Refund of overpayment to withholding agent.

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing a request for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the wages or compensation of the agent's employees or contractors. A withholding agent must file a request for a refund within

the time period set in ~~G.S.~~ G.S. 105-241.6. Interest accrues on a refund as provided in G.S. 105-241.21."

SECTION 16. G.S. 105-249.2(b) reads as rewritten:

"(b) Disaster. – The penalties in ~~G.S. 105-236(2), (3), and (4)~~ G.S. 105-236(a)(2), (3), and (4) may not be assessed for any period in which the time for filing a federal return or report or for paying a federal tax is extended under section 7508A of the Code because of a presidentially declared disaster. For the purpose of this section, "presidentially declared disaster" has the same meaning as in section 1033(h)(3) of the Code."

SECTION 17. G.S. 108A-25.2 reads as rewritten:

"**§ 108A-25.2. Exemption from limitations for individuals convicted of certain drug-related felonies.**

Individuals convicted of Class H or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and ~~and~~ the food and nutrition services program:

(1) Six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority; or

(2) If not committed to custody, six months after the date of conviction if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority.

A county department of social services shall require individuals who are eligible for Work First Program assistance and electronic food and nutrition benefits pursuant to this section to undergo substance abuse treatment as a condition for receiving Work First Program or electronic food and nutrition benefits, if funds and programs are available and to the extent allowed by federal law."

SECTION 18. G.S. 108-53(a) reads as rewritten:

"(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any electronic food and nutrition benefit to which that person is not entitled in the amount of four hundred dollars ($400.00) or less shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any electronic food and nutrition benefit to which he is not entitled in an amount more than four hundred dollars ($400.00) shall be guilty of a Class I felony."

SECTION 19. G.S. 115C-366(a3)(1) reads as rewritten:

"(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student,

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, ~~or~~

f. The loss or uninhabitability of the student's home as the result of a natural disaster, or

g. The parent or legal guardian is on active military duty and is deployed out of the local school administrative unit in which the student resides. For purposes of this sub-subdivision, the term "active duty" does not include periods of active duty for training for less than 30 days. Assignment under this sub-subdivision is only available if some evidence of the deployment is tendered with the affidavits required under subdivision (3) of this subsection."

SECTION 20. G.S. 120-103.1(i)(3)b. reads as rewritten:

"b. The hearing shall be ~~legislator~~ open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session."

SECTION 21. G.S. 138A-12(f) reads as rewritten:

"(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 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 within the jurisdiction of the Commission under subsection (b) ~~if~~ of this section, the Commission shall dismiss the complaint."

SECTION 22. G.S. 143-652.2(g) reads as rewritten:

"(g) Initial appointments to the Commission under this ~~reenacted~~ section shall be for terms commencing July 1, 2007."

SECTION 23. G.S. 143-722(b) reads as rewritten:

"(b) Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of ~~G.S. 143-6-14.~~G.S. 143C-6-14."

SECTION 24. G.S. 143A-44.1 reads as rewritten:

"**§ 143A-44.1. Creation.**

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in ~~Article IV, Section 4(1)~~ Article IX, Section (4)(1) of the Constitution."

SECTION 25. G.S. 143B-139.5B reads as rewritten:

"**§ 143B-139.5B. Department of Health and Human Services – provision for joint training.**

The Department of Health and Human Services shall offer joint training of Division of Health Service Regulation consultants, county DSS adult home specialists, and adult care home providers. The training shall be offered no fewer than two times per year, and subject matter of the training should be based on one or more of the 10 deficiencies cited most frequently in the State during the immediately preceding calendar year. The joint training shall be designed to reduce inconsistencies experienced by providers in the survey process, to increase objectivity by ~~DFS~~ DHSR consultants and DSS specialists in conducting surveys, and to promote a higher degree of understanding between facility staff and ~~DFS~~ DHSR consultants and DSS specialists in what is expected during the survey process."

SECTION 26.(a) G.S. 143B-437.11 is recodified as G.S. 143B-437.012.

SECTION 26.(b) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

. . .

(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under ~~G.S. 143B-437.11.~~G.S. 143B-437.012."

SECTION 27. G.S. 143D-8 reads as rewritten:

"**§ 143D-8. ~~Internet~~ Internal control documentation.**

Each State agency shall maintain documentation, as prescribed by the State Controller, of the system of internal control within that agency. All internal control documentation shall be available upon request for examination by the State Controller and the State Auditor."

SECTION 28. G.S. 147-86.30(c) reads as rewritten:

"(c) Priority Use of Funds. – As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission

the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

~~G.S. 143C-9-3~~"

SECTION 29. G.S. 163-278.27(a1) reads as rewritten:

"(a1) A violation of ~~G.S. 278.32~~ G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony."

SECTION 30. The introductory language of Section 3 of S.L. 2007-177 reads as rewritten:

"**SECTION 3.** ~~G.S. 122C-430.30~~ G.S. 122C-430 reads as rewritten:".

SECTION 31. The introductory language of Section 2 of S.L. 2007-318 reads as rewritten:

"**SECTION 2.** ~~G.S. 105-153A-155(g)~~ G.S. 153A-155(g) reads as rewritten:".

SECTION 32. Section 44 of S.L. 2007-348 reads as rewritten:

"**SECTION 44.** Sections 17, 23, 39, 40 and 41 of this act are effective January 1, 2007. Section 9 of this act is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, ~~34~~ and 42 of this act become effective October 1, 2007. Section 18 of this act becomes effective December 1, 2007. Section 34 of this act becomes effective January 1, 2008. The remainder of this act is effective when this act becomes law."

SECTION 33.(a) Section 1.(c) of S.L. 2007-391 reads as rewritten:

"**SECTION 1.(c)** This ~~act~~ section becomes effective December 1, 2007, and applies to offenses committed on or after that date."

SECTION 33.(b) Section 6.(f) of S.L. 2007-391 reads as rewritten:

"**SECTION 6.(f)** ~~Subsections 7(b) through 7(e) of~~ Subsections 6(b) through 6(e) of this section become effective January 1, 2008. The remainder of this section is effective when this act becomes law."

PART II. OTHER CHANGES

SECTION 34.(a) G.S. 14-71(b) reads as rewritten:

"(b) If a person knowingly receives or possesses property in the custody of a law enforcement agency that was explicitly represented to the person by an agent of the law enforcement agency or a person authorized to act on behalf of a law enforcement agency as stolen, the person is guilty of a Class H felony and may be indicted, tried, and punished in any county in which the person received or possessed the property."

SECTION 34.(b) G.S. 14-72.11 reads as rewritten:

"**§ 14-72.11. Larceny from a merchant.**

A person is guilty of a Class H felony if the person commits larceny against a merchant under any of the following circumstances:

(1) If the property taken has a value of more than two hundred dollars ($200.00), by using an exit door erected and maintained to comply

with the requirements of ~~29 C.F.R. § 1910 Subpart E,~~ 29 C.F.R. § 1910.36 and 29 C.F.R. § 1910.37 upon which door has been placed a notice, sign, or poster providing information about the felony offense and punishment provided under this subsection, to exit the premises of a store.

(2) By removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

(3) By affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(4) When the property is infant formula valued in excess of one hundred dollars ($100.00). As used in this subsection, the term "infant formula," has the same meaning as found in 21 U.S.C. § 321(z)."

SECTION 34.(c) G.S. 14-86.6 reads as rewritten:

"**§ 14-86.6. Organized retail theft.**

(a) A person is guilty of a Class H felony if the person:

(1) Conspires with another person to commit theft of retail property from ~~a~~ retail ~~establishment,~~ establishments, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

(2) Receives or possesses any retail property that has been taken or stolen in violation of subdivision (1) of this subsection while knowing or having reasonable grounds to believe the property is stolen.

(b) Any interest a person has acquired or maintained in violation of this section shall be subject to forfeiture pursuant to the procedures for forfeiture set out in G.S. 18B-504."

SECTION 35.(a) G.S. 14-208.5 reads as rewritten:

"**§ 14-208.5. Purpose.**

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest.

The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the children in this State and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that law enforcement officers' efforts to protect communities, conduct investigations, and quickly apprehend offenders who commit sex offenses or certain offenses against minors are impaired by the lack of information available to law enforcement agencies about convicted offenders who live within the agency's

jurisdiction. Release of information about these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

The enactment of the sex offender monitoring program in Part 5 of this Article is designed to utilize the latest technological solutions to monitor and track serious and violent sex offenders. The use of a continuous satellite-based monitoring system will provide this State with a more efficient and accurate method of monitoring these serious and predatory criminals. United States Department of Justice statistics reveal that, compared to non-sex offenders released from State prisons, released sex offenders were four times more likely to be rearrested for a sex crime. Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community.

Technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders once they have completed active sentences. These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly updated geographic location of supervised serious offenders and violent sexual offenders following their release, with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations. Continuous 24 hours a day, seven days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are required by law to register as sex offenders. The satellite-based monitoring program is civil and not punitive in nature, and is primarily designed as a means of assuring, as much as possible, public protection.

Therefore, it is the purpose of this Article to assist law enforcement agencies' efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, and to authorize the access to necessary and relevant information about those offenders to others as provided in this Article. It is also the purpose of this Article to ensure, through the use of available technology, that there is improved supervision and behavioral control of offenders who have been convicted of serious and violent offenses."

SECTION 35.(b) G.S. 14-208.40 reads as rewritten:

"**§ 14-208.40. Establishment of program; creation of guidelines; ~~duties.~~duties; application.**

(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~~ has been 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.

(2) Any offender who satisfies all of the following criteria: (i) ~~is~~ has been 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.~~ enrollment in the program.

(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.

(e) Application. – Notwithstanding any other provision of law, the satellite-based monitoring program and requirements, as provided in this section, and throughout this Part of Article 27A of the General Statutes, are retroactive and apply to the following persons, regardless of the date of their offense or conviction:

(1) Any person sentenced to intermediate punishment on or after August 16, 2006.

(2) Any person released from prison by parole or post-release supervision on or after August 16, 2006.

(3) Any person who completed his or her sentence on or after August 16, 2006, who is not on post-release supervision or parole."

SECTION 35.(c) G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator

pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a) or not, and ~~if so,~~ shall make a finding of fact of that ~~determination,~~ determination. The court shall specify ~~specifying~~ whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense involved ~~the physical, mental, or sexual abuse of~~ a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, or has committed an aggravated offense, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, ~~the court determines that the offender does require the highest possible level of supervision and monitoring,~~ the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 35.(d) G.S. 14-208.40B reads as rewritten:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

(a) When an offender ~~is convicted of~~ has a conviction for an offense that is a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, because the court did not make an enrollment determination at the time of sentencing as provided by law, or the sentencing occurred prior to the effective date of any law providing for an enrollment determination at time of sentencing, the Department shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~ shall schedule a hearing in ~~the~~ superior court ~~of~~ for the county in which the offender resides. The Department shall notify the offender of the Department's

determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, or (iii) the conviction offense was an aggravated offense, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved ~~the physical, mental, or sexual abuse of~~ a minor, that offense is not an aggravated offense, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires ~~the highest possible level of supervision and monitoring.~~ enrollment in the program. If so, the court ~~determines that the offender does require the highest possible level of supervision and monitoring, the court~~ shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 35.(e) If any provision of this section or its application is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable.

SECTION 36. G.S. 15A-145(a) reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier ~~than~~ than: (i) two years after the date of the ~~conviction~~ conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

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

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

SECTION 37.(a) G.S. 20-138.2A(b2) reads as rewritten:

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

SECTION 37.(b) G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No

alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Public Health,~~ 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."

SECTION 37.(c) G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. – A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating 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 Public Health,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use."

SECTION 38.(a) G.S. 32A-25.1 reads as rewritten:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina

law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.

This document gives the person you designate as your health care agent ***broad powers*** *to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent(s) to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ *(Physician)*

2. _____ *(Physician)*

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section ~~6~~5 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

_____ *(Initial)* shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____ *(Initial)* shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

_____ *(Initial)* B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or

discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

NOTE: DO NOT initial unless you insert a limitation.

_____ *(Initial)*

E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem

appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____ *(Initial)* donate any needed organs or parts; or

_____ *(Initial)* donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____ *(Initial)* donate my body for anatomical study if needed.

_____ *(Initial)* In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any adult care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____

(type/print name of signer)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date: _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 38.(b) G.S. 90-21.13(c) reads as rewritten:

"(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. ~~32A-19(b)~~ 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age;

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes."

SECTION 39.(a) G.S. 58-3-169(d) reads as rewritten:

"(d) Postdelivery Follow-Up Care. – In the case of a decision to discharge a mother and her newborn child from the inpatient setting before the expiration of 48 hours following a normal vaginal delivery or 96 hours following a cesarean section, the health benefit plan shall provide coverage for timely postdelivery care. This health care shall be provided to a mother and her newborn child by a registered nurse, physician, nurse practitioner, nurse midwife, or physician assistant experienced in maternal and child health in:

(1) The home, a provider's office, a hospital, a birthing center, an intermediate care ~~facility~~facility for the mentally retarded, a federally qualified health center, a federally qualified rural health clinic, or a State health department maternity clinic; or

(2) Another setting determined appropriate under federal regulations promulgated under Title VI of Public Law 104-204.

The attending provider in consultation with the mother shall decide the most appropriate location for follow-up care."

SECTION 39.(b) G.S. 58-50-30(d) reads as rewritten:

"(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care ~~facility~~facility for the mentally retarded, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision, unless these plan requirements apply to all providers for that service.

For purposes of this section, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife."

SECTION 39.(c) G.S. 58-55-35 reads as rewritten:

"**§ 58-55-35. Facilities, services, and conditions defined.**

(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

(1) "Adult care home" shall be defined in accordance with the terms of ~~G.S. 131D-2(a)(3).~~G.S. 131D-2(1b).

(1a) "Adult day care program" shall be defined in accordance with the provisions of G.S. 131D-6(b).

(2) "Chore" services include the performance of tasks incidental to activities of daily living that do not require the services of a trained homemaker or other specialist. Such services are provided to enable individuals to remain in their own homes and may include such services as: assistance in meeting basic care needs such as meal preparation; shopping for food and other necessities; running necessary errands; providing transportation to essential service facilities; care and cleaning of the house, grounds, clothing, and linens.

(3) "Combination home" shall be defined in accordance with the terms of ~~G.S. 131E-101(1).~~G.S. 131E-101(1a).

(4) Repealed by Session Laws 1995, c. 535, s. 3.

(5) "Family care home" shall be defined in accordance with the terms of G.S. 131D-2(a)(5).

(6) Renumbered.

(7) Repealed by Session Laws 1995, c. 535, s. 3.

(8) "Home health services" shall be defined in accordance with the terms of G.S. 131E-136(3).

(9) "Homemaker services" means supportive services provided by qualified para-professionals who are trained, equipped, assigned, and supervised by professionals within the agency to help maintain, strengthen, and safeguard the care of the elderly in their own homes. These standards must, at a minimum, meet standards established by the North Carolina Division of Social Services and may include: Providing assistance in management of household budgets; planning nutritious meals; purchasing and preparing foods; housekeeping duties; consumer education; and basic personal and health care.

(10) "Hospice" shall be defined in accordance with the terms of G.S. 131E-176(13a).

(11) "Intermediate care ~~facility"~~facility for the mentally retarded" shall be defined in accordance with the terms of ~~G.S. 131E-176(14b).~~G.S. 131E-176(14a).

(12) "Nursing home" shall be defined in accordance with the terms of G.S. 131E-101(6).

(13) "Respite care, institutional" means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time. The

insured receives care for the respite period in an institutional setting, such as a nursing home, family care home, rest home, or other appropriate setting.

(14) "Respite care, non-institutional" means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time in the home of the insured or other appropriate community location.

(15) "Skilled Nursing Facility" shall be defined in accordance with the terms of ~~G.S. 131E-176(23).~~G.S. 135-40.1(18).

(16) "Supervised living facility for developmentally disabled adults" means a residential facility, as defined in G.S. 122C-3(14), which has two to nine developmentally disabled adult residents.

(b) Whenever long-term care insurance provides coverage for organic brain disorder syndrome, progressive dementing illness, or primary degenerative dementia, such phrases shall be interpreted to include Alzheimer's Disease. Clinical diagnosis of "organic brain disorder syndrome", "progressive dementing illness", and "primary degenerative dementia" must be accepted as evidence that such conditions exist in an insured when a pathological diagnosis cannot be made; provided that such medical evidence substantially documents the diagnosis of the condition and the insured received treatment for such condition.

(c) All long-term care insurance policies must be filed with and approved by the Commissioner before they can be used in this State and are subject to the provisions of Article 38 of this Chapter."

SECTION 39.(d) G.S. 108A-62 reads as rewritten:

"**§ 108A-62. Therapeutic leave for medical assistance patients.**

Patients at an intermediate care ~~facility~~facility for the mentally retarded or skilled nursing facility may take up to 60 days of therapeutic leave in any one calendar year without the facility losing reimbursement under the medical assistance program, provided, however, no more than 15 consecutive days may be taken without approval of the Department of Health and Human Services, Division of Medical Assistance. Under no circumstances shall the number of Medicaid-covered therapeutic leave days exceed 60 days per patient per calendar year."

SECTION 39.(e) G.S. 131A-3(4) reads as rewritten:

"(4) "Health care facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation: general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; nursing homes, including skilled nursing facilities and intermediate care ~~facilities~~facilities for the mentally retarded; facilities for continuing care of the elderly and infirm; clinics and outpatient facilities; clinical, pathological and other

laboratories; health care research facilities; laundries; training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer; and other electronic facilities, fire-fighting facilities, pharmaceutical facilities and recreational facilities; storage space, X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for health care facilities staff members and physicians; and such other health care facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities;"

SECTION 39.(f) G.S. 131E-231 reads as rewritten:

"**§ 131E-231. Definitions.**

As used in this Article, unless otherwise specified:

(1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in ~~G.S. 131D-2(a)(3)~~G.S.131D-2(a)(1b) or ~~G.S. 131E-101(4).~~G.S. 131E-101(4).

(2) "Resident" means a person who has been admitted to a long-term care facility.

(3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or G.S. 131D-2 or a person or entity operating a long-term care facility subject to licensure without a license."

SECTION 39.(g) G.S. 143B-181.16 reads as rewritten:

"**§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.**

Unless the content clearly requires otherwise, as used in this Article:

(1) "Long-term care facility" means any skilled nursing facility and intermediate care ~~facility~~facility for the mentally retarded as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).

(2) "Resident" means any person who is receiving treatment or care in any long-term care facility.

(3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.

(4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article."

SECTION 40.(a) G.S. 90-270.69(8) reads as rewritten:

"The Board shall have the following powers and duties:

. . . .

(8) Establish reasonable fees for applications, ~~limited permits,~~ initial and renewal licenses, and other services provided by the Board."

SECTION 40.(b) G.S. 90-270.73(d) reads as rewritten:

"~~(d) Any individual possessing a limited permit to practice occupational therapy may use the words "occupational therapy limited permittee" or "occupational therapy assistant limited permittee" and may use the letters "O.T./L.P." or "O.T.A./L.P." in connection with his or her name or place of business.~~"

SECTION 40.(c) G.S. 90-270.78(a) reads as rewritten:

"(a) It is unlawful for any person who is not licensed in accordance with this Article or whose license has been suspended, revoked or not renewed by the Board to:

(1) Engage in the practice of occupational therapy.

(2) Orally, in writing, in print or by sign, or in any other manner, directly or by implication, represent that he or she is engaging in occupational therapy.

(3) Use in connection with his or her name or place of business the words "occupational therapist", "occupational therapy assistant", "occupational therapist ~~limited permittee", or "occupational therapy assistant limited permittee",~~ or the letters "O.T.", "O.T./L.", "O.T.A.", ~~"O.T.A./L.", "O.T./L.P.", or "O.T.A./L.P."~~ or "O.T.A./L." or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational therapist, ~~occupational therapy assistant, occupational therapist limited permittee, or occupational therapy assistant limited permittee.~~ or occupational therapy assistant."

SECTION 41. G.S. 115C-284 reads as rewritten:

"**§ 115C-284. Method of selection and requirements.**

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(b1) To qualify for certification as a school administrator, an individual must meet all of the following requirements:

(1) Submit a complete application to the State Board.

(2) Pay the applicable fee.

(3) Have a bachelors degree from an accredited college or accredited university.

(4) Have one of the following:

(i) A graduate degree from a public school administration program that meets the public school administration program approval standards established by the State Board of Education.

(ii) A masters degree from an accredited college or accredited university and, by December 31, 1999, have completed a public school administration program that meets the public school

administration program approval standards set by the State Board of Education.

(iii) Education and training determined by the State Board of Education as equivalent.

(5) Pass the exam adopted by the State Board.

..."

SECTION 42. G.S. 138A-3(24) reads as rewritten:

"(24) Nonprofit corporation or organization with which associated. – Any not for profit corporation, organization, or association, 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, lobbyist registered ~~as~~ under Chapter 120C of the General Statutes, or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State."

SECTION 43. Section 2 of S.L. 2007-169 reads as rewritten:

"**SECTION 2.** Notwithstanding G.S. 143-52.1 and S.L. 2006-203, through ~~December 31, 2008,~~ June 30, 2009, the members of the Advisory Budget Commission in office on June 30, 2007, shall continue to be eligible for appointment to the Board of Awards, and vacancies may be filled by the appointing authority. Through ~~December 31, 2008,~~ June 30, 2009, the Secretary of Administration shall appoint the Board of Awards from among those eligible."

SECTION 44. This act is effective when it becomes law.

SENATE BILL 1632:
2008 Technical Corrections Act

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 10, 2008
Introduced by:	Sen. Hartsell	**Summary by:**	Kara McCraw
Version:	PCS to First Edition S1632-CSTC		Committee Counsel

BILL ANALYSIS:

Sections 1-33 are technical changes recommended by the General Statutes Commission.

Section 34.(a)-(c) amends several provisions of the Organized Retail Theft Law to correct a citation and to clarify that the law applies to those acting on behalf of law enforcement agencies and that thefts from multiple establishments can be aggregated to reach the felony threshold.

Section 35.(a)-(e) makes a number of corrections to the statutes involving the satellite-based monitoring for sex offenders which became effective last session. These changes fix a number of problems related to the implementation of hearing provisions for satellite-based monitoring for sex offenders.

Section 36 clarifies that the earliest a petition for expunction can be filed is the later of 1) two years after the date of conviction, or 2) the completion of any period of probation.

Sections 37.(a)-(c) is a purely technical correction that corrects the DWI statutes. These technical changes were made throughout the 2006 DWI bill, but were missed in three places.

Sections 38.(a)-(b) corrects one statutory reference in the Advance Directives law and corrects one section number in the Health Care Power of Attorney Form.

Sections 39.(a)-(g) make technical changes to various statutes governing insurance, social services, and health care facilities to correct statutory citations pertaining to long term care facilities and to change the term "intermediate care facility" to the correct term "intermediate care facility for the mentally retarded."

Sections 40.(a)-(c) amends the Occupational Therapy Practice Act to remove obsolete references to limited permits. The law authorizing the Board to issue limited permits expired on October 1, 2007. This section deletes references that were inadvertently left in the law.

Section 41 adds a subsection to G.S. 115C-284 (method of selection and requirements for principals and supervisors) to restore requirements for school administrator certification that were inadvertently deleted when the Article for the defunct Standards Board for Public School Administrators was repealed.

Section 42 deletes the word "as" which was a typographical error inadvertently placed in the statute.

Section 43 amends Section 2 of S.L. 2007-169 to provide for ongoing membership to the Board of Awards. In 2006, the General Assembly abolished the Advisory Budget Commission effective July 1, 2007. The Chair of the Commission appointed members to the Board of Awards from the membership of the Commission and the Council of State. However, when the Commission was abolished, no alternate provision was enacted to provide for the continuing appointment of members to the Board. S.L. 2007-169 provided that members of the Commission as of June 30, 2007 would continue to be eligible for appointment to the Board by the Secretary of Administration through December 31, 2008. Section 42 extends this deadline to June 30, 2009.

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

Karen Cochrane-Brown, Tim Hovis and Brad Krehely substantially contributed to this summary.

S1632e1-SMTC-CSTC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 4

SENATE BILL 1860*

Judiciary II (Criminal) Committee Substitute Adopted 6/9/08
House Committee Substitute Favorable 6/24/08
Fourth Edition Engrossed 7/1/08

Short Title: Amend Child Abuse/Child Fatality Task Force. (Public)

Sponsors:

Referred to:

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR MISDEMEANOR CHILD ABUSE AND TO AMEND THE CRIMINAL OFFENSE OF FELONY CHILD ABUSE AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.2 reads as rewritten:

"**§ 14-318.2. Child abuse a Class 1 misdemeanor.**

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the ~~Class 1~~Class A1 misdemeanor of child abuse.

(b) The ~~Class 1~~ Class A1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

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

SECTION 2. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the ~~juvenile~~ child is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon ~~a juvenile~~ the child is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony. ~~"Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.~~

(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class H felony if the act or omission results in serious physical injury to the child.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

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

(d) The following definitions apply in this section:

(1) Serious bodily injury. – Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(2) Serious physical injury. – Physical injury that causes great pain and suffering. The term includes serious mental injury."

SECTION 3. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. 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.

SENATE BILL 1860:
Amend Child Abuse/Child Fatality Task Force

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 10, 2008
Introduced by:	Senator Allran	**Summary by:**	Jeff Hudson
Version:	Fourth Edition		Committee Counsel

SUMMARY: Senate Bill 1860 would increase the penalty for misdemeanor child abuse and would establish two new felony child abuse offenses for certain acts or omissions that result in the injury of a child. Senate Bill 1860 is a recommendation of the Child Fatality Task Force.

[As introduced, this bill is identical to S1816, as introduced by Senator Boseman, which is currently in Senate Judiciary I, and H2339, as introduced by Representatives Weiss and Clary, which is currently in House Judiciary I.]

[As introduced, this bill was identical to H2339, as introduced by Reps. Weiss, Clary, which is currently in House Judiciary I.]

CURRENT LAW: The General Statutes provide for several levels of criminal offenses for child abuse. The chart below describes the existing non-sexual child abuse offenses and the corresponding penalties.

General Statute Citation	Age of Victim	Relationship of Defendant to Victim	Type of Harm to Victim	Level of Penalty*
G.S. 14-318.2(a)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	By other than accidental means: • Inflicts physical injury • Allows physical injury to be inflicted • Creates or allows to be created a substantial risk of physical injury	Class 1 misdemeanor
G.S.14-318.4(a)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	• Intentionally inflicts serious physical injury • Intentionally commits an assault that results in serious physical injury	Class E felony
G.S. 14-318.4(a3)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	• Intentionally inflicts any serious bodily injury • Intentionally commits an assault that results in any serious bodily injury or results in permanent or protracted loss or impairment of any mental or emotional function	Class C felony

* See next page for presumptive ranges of punishment for each class of penalty

BILL ANALYSIS: Senate Bill 1860 would increase the penalty for misdemeanor child abuse from a Class 1 misdemeanor to a Class A1 misdemeanor.

Senate Bill 1860 would also create the following two new criminal offenses:

General Statute Citation	Age of Victim	Relationship of Defendant to Victim	Type of Harm to Victim	Level of Penalty
G.S. 14-318.4(a4)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	Willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life that results in **serious bodily injury** to the child	Class E felony
G.S. 14-318.4(a5)	Child less than 16 years old	Parent or other person providing care to or supervision of the child	Willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life that results in **serious physical injury** to the child	Class H felony

Under current law and Senate Bill 1860, "serious bodily injury" is defined as bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Senate Bill 1860 would define "serious physical injury" as physical injury that causes great pain and suffering and would include serious mental injury.

EFFECTIVE DATE: Senate Bill 1860 would become effective December 1, 2008, and apply to offenses committed on or after that date. The changes to the child abuse statutes would not affect prosecutions for offenses committed before December 1, 2008.

PRESUMPTIVE RANGES OF PUNISHMENT (assuming no prior convictions):

Level of Penalty	Presumptive Range of Punishment
Class C felony	58 to 97 months of active punishment
Class E felony	20 to 39 months of intermediate or active punishment
Class G felony	10 to 16 months of intermediate or active punishment
Class H felony	5 to 8 months of community, intermediate, or active punishment
Class A1 misdemeanor	1 to 60 days of community, intermediate, or active punishment
Class 1 misdemeanor	1 to 45 days of community punishment

Differences between the Senate Version (2nd Edition) and House Version (4th Edition)

All differences exist in new subdivisions (a4) and (a5) of G.S. 14-318.4 (Child abuse a felony)

- 4th Edition provides that omissions must be grossly negligent rather than willful.
- 4th Edition removes the language that an act or omission must be "gross, wanton, and culpable".
- 4th Edition reduces the penalty for causing serious physical injury from a Class G felony to a Class H felony.

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 15, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Tuesday, July 15, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1632	2008 Technical Corrections Act.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Tuesday, July 15, 2008 at 10:00 AM
Room 1124,

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on July 15, 2008, in Room 1124 of the Legislative Building with nine members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Albert Chang, Matt James, Rachael Dickey and Stephen Ingram and thanked them for serving.

SB 1632 (2008 Technical Corrections Act.) As this was Senator Hartsell's bill, Senator Jones presided. Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell introduced the bill and Mr. Tim Hovis, Staff Attorney, gave additional explanation. Senator Goodall moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 15, 2008

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

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

S.B. **1632** 2008 Technical Corrections Act.

Draft Number:	35609
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 15, 2008
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	NCDOJ
Al Ripley	NC Justice Coa
Hugh Tilson	NCHA
Penny Griffin	TGG
Lori Ann Harris	LAHA
Heather Dalton	NCPMA
Ellie Caldwell	NC Sheriffs' Assn.
Cam Cuer	BPMHL
Michelle Frazier	MFS
Jessica Hayes	NC Home Builders
Rick Zechini	NC Assoc. of Realtors

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdish	Astra Zeneca
Barbara Canales	BSCBC
P. Bly Hull	General Statutes Commission
John McKee	Gov Office
Fox Swift	NCCCA
Gary Robertson	AP
Jane Smith	DHHS
Jennifer Haarwood	NCDOL
Sara Riggins	NCDOL
Mildred Spearman	NCOC
[illegible]	NCDOC-JCC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 1

SENATE BILL 1632*

Short Title:	2008 Technical Corrections Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II (Criminal).	

May 19, 2008

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. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

SENATE BILL 1632*
PROPOSED COMMITTEE SUBSTITUTE S1632-CSRN-25 [v.31]

7/14/2008 8:53:40 PM

Short Title: 2008 Technical Corrections Act. (Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE VARIOUS OTHER TECHNICAL CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CHANGES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 1. G.S. 1-75.4(6) reads as rewritten:

"(6) Local Property. – In any action which arises out of:

a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it; or

d. A claim related to a loan made in this State or deemed to have been made in this State under G.S. 24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and

regardless of whether the loan payment or fee is received through a loan servicer, provided that: (i) the loan was made to a borrower who is a resident of this State, (ii) the loan is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust on real property situated in this State upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families."

SECTION 2. G.S. 7A-177(b) reads as rewritten:

"(b) In addition to the basic training course required ~~in~~ under subsection (a) of this section, continuing education courses shall be provided at such times and locations as necessary to assure that they are conveniently available to all magistrates without extensive travel to other parts of the State."

SECTION 3. G.S. 7A-498.8(b) reads as rewritten:

"(b) The appellate defender shall perform such duties as may be directed by the Office of Indigent Defense Services, including:

(1) Representing indigent persons subsequent to conviction in trial courts. The Office of Indigent Defense Services may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, assign appeals, or authorize the appellate defender to assign appeals, to a local public defender's office or to private assigned counsel.

(2) Maintaining a clearinghouse of materials and a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.

(3) Providing continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, including capital cases, as resources are available.

(4) Providing consulting services to attorneys representing defendants in capital cases.

(5) Recruiting qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.

(6) In the appellate defender's discretion, serving as counsel of record for indigent defendants in capital cases in State court.

(6a) In the appellate defender's discretion, serving as counsel of record for indigent defendants in the United States Supreme Court pursuant to a petition for writ of certiorari of the decision on direct appeal by a court of the North Carolina Appellate Division.

(7) Undertaking <u>other</u> direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded."

SECTION 4. G.S. 7A-796(19) reads as rewritten:

"(19) ~~The local program director provided for in G.S. 7A-798; and~~Any local drug treatment coordinator; and"

SECTION 5. G.S. 14-208.41(b) reads as rewritten:

"(b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court pursuant to G.S. 14-208.40A or ~~required by the Department pursuant to~~ G.S. 14-208.40B 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 or the period of time specified by the Department.~~court."

SECTION 6. G.S. 18B-902(h) reads as rewritten:

"(h) Recycling Plan Required. - Each applicant for an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall prepare and submit with the application a plan for the collection and recycling of all recyclable beverage containers of all beverages to be sold at retail on the premises."

SECTION 7. G.S. 18B-903(b2) reads as rewritten:

"(b2) Recycling Plan Required. - Each person holding an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall submit, along with the annual registration or renewal application, a current plan for the collection and recycling of all recyclable beverage containers of all beverages sold at retail on the premises."

SECTION 8. G.S. 19A-62(c) reads as rewritten:

"(c) Report. – In February of each year, the Department must report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The report must contain information regarding all revenues and expenditures of the Spay/Neuter Account."

SECTION 9. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which ~~he~~ the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which ~~his~~ the person's license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent. ~~The~~

(e1) Notwithstanding subsection (e) of this section, the Division ~~may, however,~~ may conditionally restore the ~~person's~~ license of a person to whom subsection (e) applies after it has been revoked for at least three years under ~~this~~ subsection (e) if ~~he~~ the person provides the Division with satisfactory proof ~~that:~~of all of the following:

(1) In the three years immediately preceding the person's application for a restored license, ~~he~~ the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or ~~drugs;~~ ~~and~~drugs.

(2) ~~He~~ The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance.

(e2) Notwithstanding subsection (e) of this section, the~~The~~ Division may conditionally restore the ~~person's~~ license of a person to whom subsection (e) applies after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof ~~that:~~of all of the following:

(1) ~~He~~ The person has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Department of Correction.

(2) ~~He~~ The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) ~~He~~ The person is not currently an excessive user of drugs or prescription drugs.

(4) ~~He~~ The person is not unlawfully using any controlled substance.

(e3) If the Division restores ~~the~~ a person's ~~license,~~license under subsection (e1) or (e2) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration."

SECTION 10. G.S. 20-38.7(d) reads as rewritten:

"(d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:

(1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated ~~judgment,~~ sentence, and

(2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.

A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal."

SECTION 11. G.S. 20-171.21 reads as rewritten:

"Any person violating any of the provisions of this Part shall be responsible for an infraction and may be subject to a ~~fine~~ penalty of not more than two hundred dollars ($200.00)."

SECTION 12. G.S. 58-24-185(a) reads as rewritten:

"(a) Nothing contained in this Article shall be so construed as to affect or apply to:

(1) Grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;

(2) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and

their families, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than five hundred dollars ($500.00) or disability benefits of not more than three hundred fifty dollars ($350.00) to any person in any one year, or both;

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than five hundred dollars ($500.00) or for disability benefits of not more than three hundred fifty dollars ($350.00) to any one person in any one year, or both; ~~or~~

(5) An association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars ($500.00) to any one person, provided, that the Commissioner may authorize the payment of death benefits not exceeding three thousand dollars ($3,000) to any one person, or may authorize disability benefits not exceeding three hundred dollars ($300.00), or may authorize both payments, in any one year to any one ~~person.~~person; or

...."

SECTION 13. G.S. 58-84-35(6) reads as rewritten:

"(6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the ~~Firemen's Relief Fund~~ Firefighters' Relief Fund as set forth in Article 85 of this Chapter."

SECTION 14. G.S. 90-18.5(b) reads as rewritten:

"(b) Anesthesiologist assistants are authorized to provide anesthesia services under the supervision of an anesthesiologist licensed under Article 1 of this Chapter under the following conditions:

(1) The North Carolina Medical Board has adopted rules governing the provision of anesthesia services by an anesthesiologist assistant consistent with the requirements of subsection (c) of this section.

(2) The anesthesiologist assistant holds a current license issued by the Board or is a student anesthesiologist assistant participating in a training program leading to certification by the National Commission for Certification of Anesthesiologist Assistants and licensure as an anesthesiologist assistant under ~~G.S. 90-11(a1).~~G.S. 90-9.4."

SECTION 15. G.S. 105-163.9 reads as rewritten:

"§ 105-163.9. (Effective January 1, 2008) Refund of overpayment to withholding agent.

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing a request for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the wages or compensation of the agent's employees or contractors. A withholding agent must file a request for a refund within

the time period set in ~~G.S.~~ G.S. 105-241.6. Interest accrues on a refund as provided in G.S. 105-241.21."

SECTION 16. G.S. 105-249.2(b) reads as rewritten:

"(b) Disaster. – The penalties in ~~G.S. 105-236(2), (3), and (4)~~ G.S. 105-236(a)(2), (3), and (4) may not be assessed for any period in which the time for filing a federal return or report or for paying a federal tax is extended under section 7508A of the Code because of a presidentially declared disaster. For the purpose of this section, "presidentially declared disaster" has the same meaning as in section 1033(h)(3) of the Code."

SECTION 17. G.S. 108A-25.2 reads as rewritten:

"**§ 108A-25.2. Exemption from limitations for individuals convicted of certain drug-related felonies.**

Individuals convicted of Class H or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and ~~and~~ the food and nutrition services program:

(1) Six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority; or

(2) If not committed to custody, six months after the date of conviction if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority.

A county department of social services shall require individuals who are eligible for Work First Program assistance and electronic food and nutrition benefits pursuant to this section to undergo substance abuse treatment as a condition for receiving Work First Program or electronic food and nutrition benefits, if funds and programs are available and to the extent allowed by federal law."

SECTION 18. G.S. 108-53(a) reads as rewritten:

"(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any electronic food and nutrition benefit to which that person is not entitled in the amount of four hundred dollars ($400.00) or less shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any electronic food and nutrition benefit to which he is not entitled in an amount more than four hundred dollars ($400.00) shall be guilty of a Class I felony."

SECTION 19. G.S. 115C-366(a3)(1) reads as rewritten:

"(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of any one of the following:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student,

e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, ~~or~~

f. The loss or uninhabitability of the student's home as the result of a natural disaster, or

g. The parent or legal guardian is on active military duty and is deployed out of the local school administrative unit in which the student resides. For purposes of this sub-subdivision, the term "active duty" does not include periods of active duty for training for less than 30 days. Assignment under this sub-subdivision is only available if some evidence of the deployment is tendered with the affidavits required under subdivision (3) of this subsection."

SECTION 20. G.S. 120-103.1(i)(3)b. reads as rewritten:

"b. The hearing shall be ~~legislator~~ open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session."

SECTION 21. G.S. 138A-12(f) reads as rewritten:

"(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 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 within the jurisdiction of the Commission under subsection (b) ~~if~~ of this section, the Commission shall dismiss the complaint."

SECTION 22. G.S. 143-652.2(g) reads as rewritten:

"(g) Initial appointments to the Commission under this ~~reenacted~~ section shall be for terms commencing July 1, 2007."

SECTION 23. G.S. 143-722(b) reads as rewritten:

"(b) Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of ~~G.S. 143-6-14.~~G.S. 143C-6-14."

SECTION 24. G.S. 143A-44.1 reads as rewritten:

"**§ 143A-44.1. Creation.**

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in ~~Article IV, Section 4(1)~~ Article IX, Section (4)(1) of the Constitution."

SECTION 25. G.S. 143B-139.5B reads as rewritten:

"**§ 143B-139.5B. Department of Health and Human Services – provision for joint training.**

The Department of Health and Human Services shall offer joint training of Division of Health Service Regulation consultants, county DSS adult home specialists, and adult care home providers. The training shall be offered no fewer than two times per year, and subject matter of the training should be based on one or more of the 10 deficiencies cited most frequently in the State during the immediately preceding calendar year. The joint training shall be designed to reduce inconsistencies experienced by providers in the survey process, to increase objectivity by ~~DFS~~ DHSR consultants and DSS specialists in conducting surveys, and to promote a higher degree of understanding between facility staff and ~~DFS~~ DHSR consultants and DSS specialists in what is expected during the survey process."

SECTION 26.(a) G.S. 143B-437.11 is recodified as G.S. 143B-437.012.

SECTION 26.(b) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

. . .

(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under ~~G.S. 143B-437.11.~~G.S. 143B-437.012."

SECTION 27. G.S. 143D-8 reads as rewritten:

"**§ 143D-8. ~~Internet~~ Internal control documentation.**

Each State agency shall maintain documentation, as prescribed by the State Controller, of the system of internal control within that agency. All internal control documentation shall be available upon request for examination by the State Controller and the State Auditor."

SECTION 28. G.S. 147-86.30(c) reads as rewritten:

"(c) Priority Use of Funds. – As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission

the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

~~G.S. 143C-9-3~~"

SECTION 29. G.S. 163-278.27(a1) reads as rewritten:

"(a1) A violation of ~~G.S. 278.32~~ G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony."

SECTION 30. The introductory language of Section 3 of S.L. 2007-177 reads as rewritten:

"**SECTION 3.** ~~G.S. 122C-430.30~~ G.S. 122C-430 reads as rewritten:".

SECTION 31. The introductory language of Section 2 of S.L. 2007-318 reads as rewritten:

"**SECTION 2.** ~~G.S. 105-153A-155(g)~~ G.S. 153A-155(g) reads as rewritten:".

SECTION 32. Section 44 of S.L. 2007-348 reads as rewritten:

"**SECTION 44.** Sections 17, 23, 39, 40 and 41 of this act are effective January 1, 2007. Section 9 of this act is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, ~~34~~ and 42 of this act become effective October 1, 2007. Section 18 of this act becomes effective December 1, 2007. Section 34 of this act becomes effective January 1, 2008. The remainder of this act is effective when this act becomes law."

SECTION 33.(a) Section 1.(c) of S.L. 2007-391 reads as rewritten:

"**SECTION 1.(c)** This ~~act~~ section becomes effective December 1, 2007, and applies to offenses committed on or after that date."

SECTION 33.(b) Section 6.(f) of S.L. 2007-391 reads as rewritten:

"**SECTION 6.(f)** ~~Subsections 7(b) through 7(e) of~~ Subsections 6(b) through 6(e) of this section become effective January 1, 2008. The remainder of this section is effective when this act becomes law."

PART II. OTHER CHANGES

SECTION 34.(a) G.S. 14-71(b) reads as rewritten:

"(b) If a person knowingly receives or possesses property in the custody of a law enforcement agency that was explicitly represented to the person by an agent of the law enforcement agency or a person authorized to act on behalf of a law enforcement agency as stolen, the person is guilty of a Class H felony and may be indicted, tried, and punished in any county in which the person received or possessed the property."

SECTION 34.(b) G.S. 14-72.11 reads as rewritten:

"**§ 14-72.11. Larceny from a merchant.**

A person is guilty of a Class H felony if the person commits larceny against a merchant under any of the following circumstances:

(1) If the property taken has a value of more than two hundred dollars ($200.00), by using an exit door erected and maintained to comply

with the requirements of ~~29 C.F.R. § 1910 Subpart E,~~ 29 C.F.R. § 1910.36 and 29 C.F.R. § 1910.37 upon which door has been placed a notice, sign, or poster providing information about the felony offense and punishment provided under this subsection, to exit the premises of a store.

(2) By removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

(3) By affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(4) When the property is infant formula valued in excess of one hundred dollars ($100.00). As used in this subsection, the term "infant formula," has the same meaning as found in 21 U.S.C. § 321(z)."

SECTION 34.(c) G.S. 14-86.6 reads as rewritten:

"**§ 14-86.6. Organized retail theft.**

(a) A person is guilty of a Class H felony if the person:

(1) Conspires with another person to commit theft of retail property from ~~a~~ retail ~~establishment,~~ establishments, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

(2) Receives or possesses any retail property that has been taken or stolen in violation of subdivision (1) of this subsection while knowing or having reasonable grounds to believe the property is stolen.

(b) Any interest a person has acquired or maintained in violation of this section shall be subject to forfeiture pursuant to the procedures for forfeiture set out in G.S. 18B-504."

SECTION 35. G.S. 15A-145(a) reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier ~~than~~ than: (i) two years after the date of the ~~conviction~~

conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

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

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

SECTION 36.(a) G.S. 20-138.2A(b2) reads as rewritten:

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

SECTION 36.(b) G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's

refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Public Health,~~ 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."

SECTION 36.(c) G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. – A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating 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 Public Health,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to the manner of its use."

SECTION 37.(a) G.S. 32A-25.1 reads as rewritten:

"**§ 32A-25.1. Statutory form health care power of attorney.**

(a) The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

HEALTH CARE POWER OF ATTORNEY

NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A HEALTH CARE POWER OF ATTORNEY.

EXPLANATION: *You have the right to name someone to make health care decisions for you when you cannot make or communicate those decisions. This form may be used to create a health care power of attorney, and meets the requirements of North Carolina law. However, you are not required to use this form, and North Carolina law allows the use of other forms that meet certain requirements. If you prepare your own health care power of attorney, you should be very careful to make sure it is consistent with North Carolina law.*

This document gives the person you designate as your health care agent ***broad powers*** *to make health care decisions for you when you cannot make the decision yourself or cannot communicate your decision to other people. You should discuss your wishes concerning life-prolonging measures, mental health treatment, and other health care decisions with your health care agent. Except to the extent that you express specific limitations or restrictions in this form, your health care agent may make any health care decision you could make yourself.*

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will be obligated to use due care to act in your best interests and in accordance with this document.

This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. ***Do not sign this form until*** *two witnesses and a notary public are present to watch you sign it. You then should give a copy to your health care agent and to any alternates you name. You should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State:* http://www.nclifelinks.org/ahcdr/

1. Designation of Health Care Agent.

I, _____, being of sound mind, hereby appoint the following person(s) to serve as my health care agent(s) to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document. My designated health care agent(s) shall serve alone, in the order named.

A. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

B. Name: _____ Home Telephone: _____

Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

C. Name: _____ Home Telephone: _____
Home Address: _____ Work Telephone: _____
_____ Cellular Telephone: _____

Any successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent, and shall serve any time his or her predecessor is not reasonably available or is unwilling or unable to serve in that capacity.

2. Effectiveness of Appointment.

My designation of a health care agent expires only when I revoke it. Absent revocation, the authority granted in this document shall become effective when and if one of the physician(s) listed below determines that I lack capacity to make or communicate decisions relating to my health care, and will continue in effect during that incapacity, or until my death, except if I authorize my health care agent to exercise my rights with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will continue after my death to the extent necessary to exercise that authority.

1. _____ *(Physician)*

2. _____ *(Physician)*

If I have not designated a physician, or no physician(s) named above is reasonably available, the determination that I lack capacity to make or communicate decisions relating to my health care shall be made by my attending physician.

3. Revocation.

Any time while I am competent, I may revoke this power of attorney in a writing I sign or by communicating my intent to revoke, in any clear and consistent manner, to my health care agent or my health care provider.

4. General Statement of Authority Granted.

Subject to any restrictions set forth in Section ~~6~~5 below, I grant to my health care agent full power and authority to make and carry out all health care decisions for me. These decisions include, but are not limited to:

A. Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not

limited to, medical and hospital records, and to consent to the disclosure of this information.

B. Employing or discharging my health care providers.

C. Consenting to and authorizing my admission to and discharge from a hospital, nursing or convalescent home, hospice, long-term care facility, or other health care facility.

D. Consenting to and authorizing my admission to and retention in a facility for the care or treatment of mental illness.

E. Consenting to and authorizing the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment."

F. Giving consent for, withdrawing consent for, or withholding consent for, X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, podiatrist, or other health care provider. This authorization specifically includes the power to consent to measures for relief of pain.

G. Authorizing the withholding or withdrawal of life-prolonging measures.

H. Providing my medical information at the request of any individual acting as my attorney-in-fact under a durable power of attorney or as a Trustee or successor Trustee under any Trust Agreement of which I am a Grantor or Trustee, or at the request of any other individual whom my health care agent believes should have such information. I desire that such information be provided whenever it would expedite the prompt and proper handling of my affairs or the affairs of any person or entity for which I have some responsibility. In addition, I authorize my health care agent to take any and all legal steps necessary to ensure compliance with my instructions providing access to my protected health information. Such steps shall include resorting to any and all legal procedures in and out of courts as may be necessary to enforce my rights under the law and shall include attempting to recover attorneys' fees against anyone who does not comply with this health care power of attorney.

I. To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked,

exercising any right I may have to authorize an autopsy or direct the disposition of my remains.

J. Taking any lawful actions that may be necessary to carry out these decisions, including, but not limited to: (i) signing, executing, delivering, and acknowledging any agreement, release, authorization, or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of these powers; (ii) granting releases of liability to medical providers or others; and (iii) incurring reasonable costs on my behalf related to exercising these powers, provided that this health care power of attorney shall not give my health care agent general authority over my property or financial affairs.

5. Special Provisions and Limitations.

(Notice: The authority granted in this document is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care treatment or service. If you wish to limit the scope of your health care agent's powers, you may do so in this section. If none of the following are initialed, there will be no special limitations on your agent's authority.)

A. Limitations about Artificial Nutrition or Hydration: In exercising the authority to make health care decisions on my behalf, my health care agent:

_____ *(Initial)* shall NOT have the authority to withhold artificial nutrition (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

_____ *(Initial)* shall NOT have the authority to withhold artificial hydration (such as through tubes) OR may exercise that authority only in accordance with the following special provisions:

_____

_____

NOTE: If you initial either block but do not insert any special provisions, your health care agent shall have NO AUTHORITY to withhold artificial nutrition or hydration.

_____ *(Initial)* B. Limitations Concerning Health Care Decisions. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following

special provisions: (Here you may include any specific provisions you deem appropriate such as: your own definition of when life-prolonging measures should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or are unacceptable to you for any other reason.)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ C. Limitations Concerning Mental Health Decisions. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions: (Here you may include any specific provisions you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you.)

(Initial)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ D. Advance Instruction for Mental Health Treatment. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment):

(Initial)

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

_____ E. Autopsy and Disposition of Remains. In exercising the authority to make decisions regarding autopsy and disposition

(Initial)

of remains on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding burial or cremation):

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

6. Organ Donation.

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

_____ *(Initial)* donate any needed organs or parts; or

_____ *(Initial)* donate only the following organs or parts:

_____

NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.

_____ *(Initial)* donate my body for anatomical study if needed.

_____ *(Initial)* In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)

_____

_____

_____

NOTE: DO NOT initial unless you insert a limitation.

NOTE: NO AUTHORITY FOR ORGAN DONATION IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.

7. Guardianship Provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate the persons designated in Section 1, in the order named, to be the guardian of my person, to

serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

8. Reliance of Third Parties on Health Care Agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions in reliance on that authority or those representations.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney shall take precedence over any health care provisions in any valid general power of attorney I have not revoked.

B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are severable, so that the invalidity of one or more powers shall not affect any others. This power of attorney shall not be affected or revoked by my incapacity or mental incompetence.

C. Health Care Agent Not Liable. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, assigns, and personal representatives from all liability and from all claims or

demands of all kinds arising out of my health care agent's acts or omissions, except for my health care agent's willful misconduct or gross negligence.

D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this Health Care Power of Attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, entity, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

E. Reimbursement. My health care agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this directive.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

This the _____ day of _____, 20____.

_____(SEAL)

I hereby state that the principal, _____, being of sound mind, signed (or directed another to sign on the principal's behalf) the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor a licensed health care provider or mental health treatment provider who is (1) an employee of the principal's attending physician or mental health treatment provider, (2) an employee of the health facility in which the principal is a patient, or (3) an employee of a nursing home or any adult care home where the principal resides. I further state that I do not have any claim against the principal or the estate of the principal.

Date: _____ Witness: _____

Date: _____ Witness: _____

_____COUNTY, _____STATE

Sworn to (or affirmed) and subscribed before me this day by _____
(type/print name of signer)

_____
(type/print name of witness)

_____
(type/print name of witness)

Date: _____ _____
(Official Seal) *Signature of Notary Public*

_____, Notary Public
Printed or typed name

My commission expires: _____

(b) Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating a health care power of attorney and does not affect the use of other forms of health care powers of attorney, including previous statutory forms."

SECTION 37.(b) G.S. 90-21.13(c) reads as rewritten:

"(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. ~~32A-19(b)~~ 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;

(3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;

(4) The patient's spouse;
(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age;
(6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or
(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes."

SECTION 38.(a) G.S. 58-3-169(d) reads as rewritten:

"(d) Postdelivery Follow-Up Care. – In the case of a decision to discharge a mother and her newborn child from the inpatient setting before the expiration of 48 hours following a normal vaginal delivery or 96 hours following a cesarean section, the health benefit plan shall provide coverage for timely postdelivery care. This health care shall be provided to a mother and her newborn child by a registered nurse, physician, nurse practitioner, nurse midwife, or physician assistant experienced in maternal and child health in:

(1) The home, a provider's office, a hospital, a birthing center, an intermediate care ~~facility~~facility for the mentally retarded, a federally qualified health center, a federally qualified rural health clinic, or a State health department maternity clinic; or
(2) Another setting determined appropriate under federal regulations promulgated under Title VI of Public Law 104-204.

The attending provider in consultation with the mother shall decide the most appropriate location for follow-up care."

SECTION 38.(b) G.S. 58-50-30(d) reads as rewritten:

"(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;
(2) The policy currently provides benefits for identical services performed by other licensed health care providers;
(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;
(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care ~~facility~~facility for the mentally retarded, or home care agency); and
(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision, unless these plan requirements apply to all providers for that service.

For purposes of this section, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife."

SECTION 38.(c) G.S. 58-55-35 reads as rewritten:

"**§ 58-55-35. Facilities, services, and conditions defined.**

(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

(1) "Adult care home" shall be defined in accordance with the terms of ~~G.S. 131D-2(a)(3).~~G.S. 131D-2(1b).

(1a) "Adult day care program" shall be defined in accordance with the provisions of G.S. 131D-6(b).

(2) "Chore" services include the performance of tasks incidental to activities of daily living that do not require the services of a trained homemaker or other specialist. Such services are provided to enable individuals to remain in their own homes and may include such services as: assistance in meeting basic care needs such as meal preparation; shopping for food and other necessities; running necessary errands; providing transportation to essential service facilities; care and cleaning of the house, grounds, clothing, and linens.

(3) "Combination home" shall be defined in accordance with the terms of ~~G.S. 131E-101(1).~~G.S. 131E-101(1a).

(4) Repealed by Session Laws 1995, c. 535, s. 3.

(5) "Family care home" shall be defined in accordance with the terms of G.S. 131D-2(a)(5).

(6) Renumbered.

(7) Repealed by Session Laws 1995, c. 535, s. 3.

(8) "Home health services" shall be defined in accordance with the terms of G.S. 131E-136(3).

(9) "Homemaker services" means supportive services provided by qualified para-professionals who are trained, equipped, assigned, and supervised by professionals within the agency to help maintain, strengthen, and safeguard the care of the elderly in their own homes. These standards must, at a minimum, meet standards established by the North Carolina Division of Social Services and may include: Providing assistance in management of household budgets; planning nutritious meals; purchasing and preparing foods; housekeeping duties; consumer education; and basic personal and health care.

(10) "Hospice" shall be defined in accordance with the terms of G.S. 131E-176(13a).

(11) "Intermediate care ~~facility"~~facility for the mentally retarded" shall be defined in accordance with the terms of ~~G.S. 131E-176(14b).~~G.S. 131E-176(14a).

(12) "Nursing home" shall be defined in accordance with the terms of G.S. 131E-101(6).

(13) "Respite care, institutional" means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time. The insured receives care for the respite period in an institutional setting, such as a nursing home, family care home, rest home, or other appropriate setting.

(14) "Respite care, non-institutional" means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time in the home of the insured or other appropriate community location.

(15) "Skilled Nursing Facility" shall be defined in accordance with the terms of ~~G.S. 131E-176(23).~~G.S. 135-40.1(18).

(16) "Supervised living facility for developmentally disabled adults" means a residential facility, as defined in G.S. 122C-3(14), which has two to nine developmentally disabled adult residents.

(b) Whenever long-term care insurance provides coverage for organic brain disorder syndrome, progressive dementing illness, or primary degenerative dementia, such phrases shall be interpreted to include Alzheimer's Disease. Clinical diagnosis of "organic brain disorder syndrome", "progressive dementing illness", and "primary degenerative dementia" must be accepted as evidence that such conditions exist in an insured when a pathological diagnosis cannot be made; provided that such medical evidence substantially documents the diagnosis of the condition and the insured received treatment for such condition.

(c) All long-term care insurance policies must be filed with and approved by the Commissioner before they can be used in this State and are subject to the provisions of Article 38 of this Chapter."

SECTION 38.(d) G.S. 108A-62 reads as rewritten:

"**§ 108A-62. Therapeutic leave for medical assistance patients.**

Patients at an intermediate care ~~facility~~facility for the mentally retarded or skilled nursing facility may take up to 60 days of therapeutic leave in any one calendar year without the facility losing reimbursement under the medical assistance program, provided, however, no more than 15 consecutive days may be taken without approval of the Department of Health and Human Services, Division of Medical Assistance. Under no circumstances shall the number of Medicaid-covered therapeutic leave days exceed 60 days per patient per calendar year."

SECTION 38.(e) G.S. 131A-3(4) reads as rewritten:

"(4) "Health care facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation: general hospitals, chronic diseases, maternity, mental, tuberculosis and other specialized hospitals; facilities for intensive care and self-care; nursing homes, including

skilled nursing facilities and intermediate care ~~facilities~~facilities for the mentally retarded; facilities for continuing care of the elderly and infirm; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administration buildings, central service and other administrative facilities; communication, computer; and other electronic facilities, fire-fighting facilities, pharmaceutical facilities and recreational facilities; storage space, X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for health care facilities staff members and physicians; and such other health care facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities;"

SECTION 38.(f) G.S. 131E-231 reads as rewritten:

"**§ 131E-231. Definitions.**

As used in this Article, unless otherwise specified:

(1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in ~~G.S. 131D-2(a)(3)~~G.S.131D-2(a)(1b) or ~~G.S. 131E-101(4).~~G.S. 131E-101(4).

(2) "Resident" means a person who has been admitted to a long-term care facility.

(3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or G.S. 131D-2 or a person or entity operating a long-term care facility subject to licensure without a license."

SECTION 38.(g) G.S. 143B-181.16 reads as rewritten:

"**§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.**

Unless the content clearly requires otherwise, as used in this Article:

(1) "Long-term care facility" means any skilled nursing facility and intermediate care ~~facility~~facility for the mentally retarded as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).

(2) "Resident" means any person who is receiving treatment or care in any long-term care facility.

(3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.

(4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article."

SECTION 39. G.S. 83A-6(a) reads as rewritten:

"(a) The Board shall have the power to adopt bylaws, rules, and standards of professional conduct to carry out the purposes of this Chapter, including, but not limited to:

(1) The adoption of bylaws governing its meetings and proceedings;

(2) The establishment of qualification requirements for admission to examinations, and for individual or corporate licensure as provided in G.S. 83A-7 and 83A-8;

(3) The establishment of the types and contents of examinations, their conduct, and the minimum scores or other criteria for passing such examinations;

(4) The adoption of mandatory standards of professional conduct concerning misrepresentations, conflicts of interest, incompetence, disability, violations of law, dishonest conduct, or other unprofessional conduct for those persons or corporations regulated by this Chapter, which standards shall be enforceable under the disciplinary procedures of the Board;

(5) The establishment or approval of requirements for renewal of licenses designed to promote the continued professional development and competence of licensees. Such requirements shall be designed solely to improve the professional knowledge and skills of a licensee directly related to the current and emerging bodies of knowledge and skills of the licensee's profession.

(6) The power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of architects as a condition of renewal of licenses."

SECTION 40.(a) G.S. 90-270.69(8) reads as rewritten:

"The Board shall have the following powers and duties:

. . . .

(8) Establish reasonable fees for applications, ~~limited permits,~~ initial and renewal licenses, and other services provided by the Board."

SECTION 40.(b) G.S. 90-270.73(d) reads as rewritten:

"~~(d) Any individual possessing a limited permit to practice occupational therapy may use the words "occupational therapy limited permittee" or "occupational therapy assistant limited permittee" and may use the letters "O.T./L.P." or "O.T.A./L.P." in connection with his or her name or place of business.~~"

SECTION 40.(c) G.S. 90-270.78(a) reads as rewritten:

"(a) It is unlawful for any person who is not licensed in accordance with this Article or whose license has been suspended, revoked or not renewed by the Board to:

(1) Engage in the practice of occupational therapy.
(2) Orally, in writing, in print or by sign, or in any other manner, directly or by implication, represent that he or she is engaging in occupational therapy.
(3) Use in connection with his or her name or place of business the words "occupational therapist", "occupational therapy assistant", "occupational therapist ~~limited permittee", or "occupational therapy assistant limited permittee",~~ or the letters "O.T.", "O.T./L.", "O.T.A.", ~~"O.T.A./L.", "O.T./L.P.", or "O.T.A./L.P."~~ or "O.T.A./L." or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational therapist, ~~occupational therapy assistant, occupational therapist limited permittee, or occupational therapy assistant limited permittee.~~ or occupational therapy assistant."

SECTION 41. G.S. 90-285.1(2) reads as rewritten:

"(2) Has violated the provisions of ~~Part B~~Part 2 of Article 6 of Chapter 131E of the General Statutes and rules promulgated thereunder;".

SECTION 42. G.S. 105-164.4B(d)(2) reads as rewritten:

"(2) Direct mail. – Direct mail that meets one of the conditions of this subdivision is sourced to the location where the property is delivered. In all other cases, direct mail is sourced in accordance with the principles set out in ~~subsection (a)~~ subdivision (a)(3) of this section.
a. Direct mail purchased pursuant to a direct pay permit.
b. When the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered."

SECTION 43. G.S. 115C-284 reads as rewritten:

"**§ 115C-284. Method of selection and requirements.**

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(b1) To qualify for certification as a school administrator, an individual must meet all of the following requirements:
(1) Submit a complete application to the State Board.
(2) Pay the applicable fee.
(3) Have a bachelors degree from an accredited college or accredited university.
(4) Have one of the following:
(i) A graduate degree from a public school administration program that meets the public school administration program approval standards established by the State Board of Education.

(ii) A masters degree from an accredited college or accredited university and, by December 31, 1999, have completed a public school administration program that meets the public school administration program approval standards set by the State Board of Education.

(iii) Education and training determined by the State Board of Education as equivalent.

(5) Pass the exam adopted by the State Board.

. . ."

SECTION 44. G.S. 138A-3(24) reads as rewritten:

"(24) Nonprofit corporation or organization with which associated. – Any not for profit corporation, organization, or association, 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, lobbyist registered ~~as~~ under Chapter 120C of the General Statutes, or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this State."

SECTION 45. Section 2 of S.L. 2007-169 reads as rewritten:

"**SECTION 2.** Notwithstanding G.S. 143-52.1 and S.L. 2006-203, through ~~December 31, 2008,~~ June 30, 2009, the members of the Advisory Budget Commission in office on June 30, 2007, shall continue to be eligible for appointment to the Board of Awards, and vacancies may be filled by the appointing authority. Through ~~December 31, 2008,~~ June 30, 2009, the Secretary of Administration shall appoint the Board of Awards from among those eligible."

SECTION 46. If House Bill 1003, 2007 Regular Session, becomes law, G.S. 15A-1344(f)(2), as enacted by House Bill 1003, reads as rewritten:

"(2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation."

SECTION 47. If House Bill 1113, 2007 Regular Session, becomes law, then G.S. 143-299.1A(c), as enacted by House Bill 1113, reads as rewritten:

"(c) This section does not apply to a unit of local government or its officers, employees, or agents."

SECTION 48. If House Bill 2436, 2007 Regular Session, and Senate Bill 2015, 2007 Regular Session, become law, then Section 11 of Senate Bill 2015 is repealed.

SECTION 49. If House Bill 2443, 2007 Regular Session, becomes law, then Section 2.1 of that act is amended by deleting "135.38.5A." and substituting "135-38.5A."

SECTION 50. If Senate Bill 1800, 2007 Regular Session, becomes law, then G.S. 20-305(5)a., as amended by Section 3 of that bill, reads as rewritten:

"a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this ~~section; or~~section.

2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two ~~years;~~years.

3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the ~~relocation;~~ ~~or~~relocation.

4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market ~~area; or~~area."

SECTION 51. This act is effective when it becomes law.

SENATE BILL 1632:
2008 Technical Corrections Act

BILL ANALYSIS

Committee:	Senate Judiciary II (Criminal)	**Date:**	July 15, 2008
Introduced by:	Sen. Hartsell	**Summary by:**	Kara McCraw Committee Counsel
Version:	PCS to First Edition S1632-CSTC-25|v31|		

BILL ANALYSIS:

Sections 1-33 are technical changes recommended by the General Statutes Commission.

Section 34.(a)-(c) amends several provisions of the Organized Retail Theft Law to correct a citation and to clarify that the law applies to those acting on behalf of law enforcement agencies and that thefts from multiple establishments can be aggregated to reach the felony threshold.

Section 35 clarifies that the earliest a petition for expunction can be filed is the later of 1) two years after the date of conviction, or 2) the completion of any period of probation.

Sections 36.(a)-(c) is a purely technical correction that corrects the DWI statutes. These technical changes were made throughout the 2006 DWI bill, but were missed in three places.

Sections 37.(a)-(b) corrects one statutory reference in the Advance Directives law and corrects one section number in the Health Care Power of Attorney Form.

Sections 38.(a)-(g) make technical changes to various statutes governing insurance, social services, and health care facilities to correct statutory citations pertaining to long term care facilities and to change the term "intermediate care facility" to the correct term "intermediate care facility for the mentally retarded."

Section 39 gives the North Carolina Board of Architecture the power to deal with real property in the same manner as a real person, subject to approval by the Governor and Council of State for acquisition, rental, encumbrance, leasing and sale of real property.

Sections 40.(a)-(c) amends the Occupational Therapy Practice Act to remove obsolete references to limited permits. The law authorizing the Board to issue limited permits expired on October 1, 2007. This section deletes references that were inadvertently left in the law.

Section 41 corrects a statutory reference in G.S. 90-285.1(2).

Section 42 corrects a statutory reference in G.S. 105-164.4B(d)(2).

Section 43 adds a subsection to G.S. 115C-284 (method of selection and requirements for principals and supervisors) to restore requirements for school administrator certification that were inadvertently deleted when the Article for the defunct Standards Board for Public School Administrators was repealed.

Section 44 deletes the word "as" which was a typographical error inadvertently placed in the statute.

Section 45 amends Section 2 of S.L. 2007-169 to provide for ongoing membership to the Board of Awards. In 2006, the General Assembly abolished the Advisory Budget Commission effective July 1, 2007. The Chair of the Commission appointed members to the Board of Awards from the membership of the Commission and the Council of State. However, when the Commission was abolished, no alternate provision was enacted to provide for the continuing appointment of members to the Board. S.L. 2007-169 provided that members of the Commission as of June 30, 2007 would continue to be eligible for appointment to the Board by the Secretary of Administration through December 31, 2008. Section 42 extends this deadline to June 30, 2009.

Section 46 adds the words "of the" that were inadvertently omitted from new language to G.S. 15A-1344(f)(2) as amended by House Bill 1003, if that bill becomes law.

Section 47 clarifies that G.S. 143-299.1A (Limit use of public duty doctrine as affirmative defense), as enacted by House Bill 1113, does not apply to a unit of local government or its officers, employees, or agents, if that bill becomes law.

Section 48 repeals Section 11 of Senate Bill 2015 if both House Bill 2436 and Senate Bill 2015 become law, as House Bill 2436 provides an inclusive definition of state educational institution which makes the change in Section 11 of Senate Bill 2015 unneeded.

Section 49 corrects a statutory citation in Section 2.1 of House Bill 2443, if that bill becomes law.

Section 50 deletes unnecessary conjunctions in G.S. 20-305(5)a. as amended by Senate Bill 1800, if that bill becomes law.

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

Karen Cochrane-Brown, Tim Hovis and Brad Krehely substantially contributed to this summary.

S1632e1-SMTC-CSTC

Senate Judiciary II (Criminal) Committee
Wednesday, July 16, 2008, 10:00 AM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 2105	Compensation for Erroneously Convicted.	Representative Blue Representative Ross Representative Harrison Representative Glazier

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	July 16, 2008	10:00 AM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 2105	Compensation for Erroneously Convicted.	Representative Blue Representative Ross Representative Harrison Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Wednesday, July 16, 2008 at 10:00 AM
Room 1124,

MINUTES

The Senate Judiciary II (Criminal) Committee met at 10:00 AM on July 16, 2008, in Room 1124 of the Legislative Building with twelve members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Eldon Zacek, III, and Rachael Dickey and thanked them for their service.

HB 2105 (Compensation for Erroneously Convicted.) Representative Glazier was recognized to explain the bill. Ms. Chris Mumma, representing the North Carolina Center on Actual Innocence, spoke in favor of the bill. Representative Glazier answered questions from Senators Goodall, Jacumin, Kerr, Jones, Allran and Dorsett. Senator Snow moved for a favorable report with a serial referral to Appropriations/Base Budget. All voted and the motion carried.

HB 2397 (Nurs. Home Admin. & Gen. Assembly/Crim. Hist.) Senator Hartsell noted that no vote would be taken and the bill would be discussed at an afternoon meeting of the Committee. Ms. Anna Niles, of the Fiscal Research Division, and Ms. Heather Fennell, of the Research Division, gave brief explanations. Ms. Fennell answered questions from Senators Goodall, Jones, Dorsett and Kerr.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Wednesday, July 16, 2008

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

FAVORABLE

H.B.(CS #1) **2105** Compensation for Erroneously Convicted.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-16-08

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mollie McInnis	NCBA
Paul Stam	NCBA
John Stallings	Sun Trust
Chris Mumma	NC Center on Actual Innocence
W. Woodward	AP
Mildred Spearman	NCDOC
Casandra White	Gov. Office
Cadey Thomas	NCAR
Allen	DOJ
Amy Simes	
Dayton Maynard	

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-16-08

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janet Johnson	
R. Paul Wilms	NCHBA
Jon Brewer	AHHC
Nick Ecker	Womble
Cain Sawd	Lee Glorier
Kim Crawford	NCBA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 2

HOUSE BILL 2105

Committee Substitute Favorable 6/25/08

Short Title: Compensation for Erroneously Convicted. (Public)

Sponsors:

Referred to:

May 15, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE; TO REQUIRE THE INDUSTRIAL COMMISSION TO ANNUALLY ADJUST THE COMPENSATION TO REFLECT INCREASES IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS; AND TO ALLOW THE INDUSTRIAL COMMISSION TO AWARD ADDITIONAL COMPENSATION OF JOB SKILLS TRAINING AND EXPENSES FOR TUITION AND FEES AT A NORTH CAROLINA COMMUNITY COLLEGE OR CONSTITUENT INSTITUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.**

(a) At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall award to the claimant an amount equal to ~~twenty thousand dollars ($20,000)~~ fifty thousand dollars ($50,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, including any time spent awaiting ~~trial, but in~~ trial. However, (i) in no event shall the ~~compensation~~ compensation, including the compensation provided in subsections (b) and (c) of this section, exceed a total amount of ~~five hundred thousand dollars ($500,000).~~ seven hundred fifty thousand dollars ($750,000), and (ii) a claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for conviction of a crime other than the

one for which the pardon of innocence was granted. The compensation is not subject to any child support obligations that may have accrued against the claimant while the claimant was serving a prison sentence for the crime for which the pardon of innocence was granted.

The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 148-84 is amended by adding new subsections to read:

"(b) Notwithstanding the amounts provided for in subsection (a) of this section, beginning July 1, 2009, the Industrial Commission shall annually adjust the amount awarded under this Article to reflect the increase, if any, in the Consumer Price Index For All Urban Consumers for the previous calendar year, as determined by the United States Department of Labor; however, no annual increase may exceed five percent (5%) of the existing amount. The actual amount awarded to an individual claimant shall be based upon the adjusted amount in effect on the date that the claimant files a petition with the Industrial Commission under this Article.

(c) In addition to the compensation provided under subsections (a) and (b) of this section, the Industrial Commission shall determine the extent to which incarceration has deprived a claimant of educational or training opportunities and, based upon those findings, may award the following compensation for loss of life opportunities:

(1) Job skills training for at least one year through an appropriate State program; and

(2) Expenses for tuition and fees at any public North Carolina community college or constituent institution of The University of North Carolina for any degree or program of the claimant's choice that is available from one or more of the applicable institutions. Claimants are also entitled to assistance in meeting any admission standards or criteria required at any of those institutions, including assistance in satisfying requirements for a certificate of equivalency of completion of secondary education. A claimant may apply for aid under this subdivision within 10 years of the claimant's release from incarceration, and aid shall continue for up to a total of five years when initiated within the 10-year period, provided the claimant makes satisfactory progress in the courses or degree program in which the claimant is enrolled."

SECTION 3. This act is effective when it becomes law and applies to any person granted a pardon of innocence by the Governor on or after July 1, 2007.

HOUSE BILL 2105:
Compensation for Erroneously Convicted

BILL ANALYSIS

Committee:	Senate Ref to Judiciary II (Criminal). If fav, re-ref to Appropriations/Base Budget	**Date:**	July 16, 2008
Introduced by:	Representatives Glazier, Ross, Blue, and Harrison	**Summary by:**	Drupti Chauhan Staff Attorney
Version:	Second Edition		

SUMMARY: ***House Bill 2105 would increase the compensation provided to persons who have been erroneously convicted of felonies and have received pardons of innocence. The bill would require the Industrial Commission to annually adjust the compensation to reflect increases in the Consumer Price Index for All Urban Consumers. In addition, the bill allows the Industrial Commission to award to these persons job skills training for one year and expenses for tuition and fees at any community college or constituent institution of The University of North Carolina.***

CURRENT LAW: A person who had been convicted of a felony and had been imprisoned in a North Carolina State prison may petition the State for compensation if the person:

- Was granted a pardon of innocence by the Governor upon the grounds that:
  - The crime with which the person was charged with was not committed or
  - The crime with which the person was charged was not committed by that person.
- Presented the petition within five years of the granting of the pardon.

The petition is presented to the Industrial Commission which hears the claim for compensation. If the Industrial Commission finds that the claimant received a pardon of innocence for the grounds listed above, the Industrial Commission must award the claimant $20,000 for each year or the pro rata amount for the portion of each year of the imprisonment actually served including any time spent awaiting trial. The compensation cannot exceed a total of $500,000.

BILL ANALYSIS: House Bill 2105 would increase the compensation to $50,000 for each year or the pro rata amount of each year of the imprisonment actually served including any time spent awaiting trial. The total compensation, (including annual adjustments because of increases in the Consumer Price Index for All Urban Consumers, job skills training, and tuition and fees at a North Carolina public college or community college) could not exceed $750,000. The statute would also specify that the claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for a conviction of a crime other than the one for which the pardon of innocence was granted.

The bill would specify that the compensation is not subject to any child support obligations that may have accrued against the claimant while he or she was incarcerated for the crime for which the pardon was granted.

Section 2 of the bill would add a new subsection that requires the Industrial Commission to annually increase the amount awarded to reflect any increase in the Consumer Price Index for All Urban Consumers for the previous calendar year as determined by the United States Department of Labor. No annual increase can exceed 5% of the existing amount. The actual amount awarded to an individual

claimant is to be based on the adjusted amount in effect on the date that the claimant files a petition with the Industrial Commission.

The bill also directs the Industrial Commission to determine the extent to which the incarceration deprived the claimant of educational training and opportunities. Based on those findings, the Industrial Commission may also award the following types of compensation:

- Job skills training for at least one year through an appropriate State program; and
- Expenses for tuition and fees at any North Carolina community college constituent institution of The University of North Carolina for any degree or program of the claimant's choice that is available at the applicable institutions.

Claimants are also entitled to assistance in meeting any admissions standards required by any of the applicable institutions. A claimant can apply for this educational aid within 10 years of the claimant's release. The aid must continue for up to a period of five years when initiated within the 10 year period if the claimant makes satisfactory progress in the courses or degree programs in which the claimant is enrolled.

EFFECTIVE DATE: The act becomes effective when it becomes law and applies to any person granted a pardon of innocence by the Governor on or after July 1, 2007.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Judiciary II (Criminal)** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	July 16, 2008	2:30 PM	1124

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 2397	Nurs. Home Admin & Gen. Assembly/ Crim. Hist.	Representative Bordsen Representative Pierce Representative Farmer-Butterfield Representative Boylan

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II (Criminal) Committee
Wednesday, July 16, 2008, 2:30 PM
1124

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 2397	Nurs. Home Admin & Gen. Assembly/ Crim. Hist.	Representative Bordsen Representative Pierce Representative Farmer-Butterfield Representative Boylan

Presentations

Other Business

Adjournment

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Wednesday, July 16, 2008 at 2:30 PM
Room 1124,

MINUTES

The Senate Judiciary II (Criminal) Committee met at 2:30 PM on July 16, 2008, in Room 1124 of the Legislative Building with eleven members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

HB 2397 (Nurs. Home Admin & Gen. Assembly/Crim. Hist.) Representative Bordsen was recognized to explain the bill. She answered questions from Senators Swindell and Dorsett. Senator Swindell moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, July 16, 2008

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

FAVORABLE

H.B.(CS #3) **2397** Nurs. Home Admin & Gen. Assembly/ Crim. Hist.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 16, 2008
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra DeCamilli	10G
Pete Jarvis	Gov Office
Cliff Vanek	Gov Office
Michelle Frazier	MFS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 5

HOUSE BILL 2397*

Committee Substitute Favorable 6/4/08
Committee Substitute #2 Favorable 6/30/08
Committee Substitute #3 Favorable 7/2/08
Fifth Edition Engrossed 7/7/08

Short Title: Nurs. Home Admin & Gen. Assembly/ Crim. Hist. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING AND TO AUTHORIZE EMPLOYING ENTITIES OF THE GENERAL ASSEMBLY TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF PROSPECTIVE AND CURRENT EMPLOYEES.

The General Assembly of North Carolina enacts:

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

"**§ 90-288.01. Criminal history record checks of applicants for licensure.**

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of

Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) Criminal History Record Check. – The Board shall require a criminal history record check of all applicants. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the applicant at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the applicant and the job duties of the position to be filled.
(6) The applicant's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the applicant of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – If the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board must disclose to the applicant the information contained in the criminal history record check that is relevant to the Board's actions. The Board shall not provide a copy of the criminal history record check to the applicant. An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in an applicant's criminal history record check."

SECTION 2. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.24. Criminal history record checks of applicants for licensure as nursing home administrators.**

(a) The Department of Justice may provide to the North Carolina State Board of Examiners for Nursing Home Administrators from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a nursing home administrator under Article 20 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history 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 applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board 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 history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 7D.

"Employing Entities of the General Assembly.

"**§ 120-36.20. Criminal history record check; denial of employment.**

(a) An employing entity of the General Assembly includes any of the following:

(1) The President Pro Tempore of the Senate.

(2) The Speaker of the House of Representatives.

(3) The Principal Clerk of the Senate.

(4) The Principal Clerk of the House of Representatives.

(5) The Senate Director of Legislative Assistants.

(6) The Legislative Services Commission.

(b) An employing entity of the General Assembly may deny employment to or refuse to accept an initial application for employment from any person who refuses to consent to a criminal history check authorized under G.S. 114-19.25. An employing entity of the General Assembly may dismiss a current employee or refuse to extend the employee's period of employment if that employee refuses to consent to a criminal history record check authorized under G.S. 114-19.25."

SECTION 4. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.25. Criminal record checks for employing entities of the General Assembly.**

(a) The Department of Justice may provide to an employing entity of the General Assembly from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee of that employing entity of the General Assembly. The employing entity of the General Assembly shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, a form signed by the current or prospective employee 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 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 employing entity of the General Assembly 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 5. Sections 1 and 2 of this act are effective December 1, 2008 and apply to nursing home administrator applications and renewals submitted to the Board on or after this date. The remainder of this act is effective when it becomes law.

HOUSE BILL 2397:
Nurs. Home Admin & Gen. Assembly/ Crim. Hist

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 16, 2008
Introduced by:	Reps. Bordsen, Farmer-Butterfield, Boylan, Pierce	**Summary by:**	Heather Fennell Committee Counsel
Version:	Fifth Edition		

SUMMARY: ***House Bill 2397 would authorize the State Board of Examiners for Nursing Home Administrators (Board) to obtain criminal record checks for applicants for licensure as nursing home administrators. The House amended the bill to also authorize the employing entities of the General Assembly to conduct criminal record checks for current and potential employees of the General Assembly.***

CURRENT LAW: Article 20 of Chapter 90, the Nursing Home Administrator Act, establishes the State Board of Examiners for Nursing Home Administrators and provides the Board with the authority to issue licenses to qualified persons and to establish qualification criteria for such nursing home administrators. Currently, the Board does not have the authority to require criminal history record checks.

BILL ANALYSIS: House Bill 2397 would do the following:

Section 1: Would provide for criminal history checks of applicants for licensure as nursing home administrators.

Definitions:

- *Applicant:* Any person applying for initial licensure as a nursing home administrator, seeking licensure based on reciprocity with other states, or renewing an existing license.
- *Criminal History:* A history of conviction of a state or federal crime, whether misdemeanor or felony, that bears on the applicant's fitness for licensure as a nursing home administrator. A list of criminal offenses is included in the definition.

Criminal History Record Check: The Board must require a criminal history record check (record check) of all applicants, and refusal to consent to a record check may constitute grounds for denial of licensure.

- The Board must provide to the NC Department of Justice (DOJ) all of the following:
  - The fingerprints of the applicant to be checked,
  - A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
  - Any other information required by DOJ.
- The Board must keep all information obtained pursuant to this section confidential.
- The Board must collect any fees required by DOJ and remit those fees to the DOJ for expenses associated with the record check.

Convictions: A conviction of one or more offenses revealed by the record check shall not automatically bar licensure. The Board must consider the following factors regarding the conviction.

1. Level of seriousness of the crime.
2. Date of the crime.
3. Age of the applicant at the time of the conviction.
4. Circumstances surrounding commission of the crime, if known.
5. Nexus between the criminal conduct and the job duties to be filled.

6. Applicant's prison, jail, parole, rehabilitations, and employment records since date of commission of crime.

7. Subsequent commission by applicant of another crime listed in definition of criminal history.

Denial of Licensure: If the Board refuses to issue or renew a license based on information obtained from a record check:

- The Board must disclose to the applicant the information in the record check relevant to the Board's actions. A copy of the record check shall not be provided to the applicant.
- The applicant has a right to appear before the Board and appeal the decision. Such an appearance constitutes exhaustion of administrative remedies in accordance with Chapter 150B (Administrative Procedure Act).

Limited Immunity: The Board, its officers and employees, are immune from civil liability for actions based on information provided in an applicant's record check, if acting in good faith and in compliance with the section.

Section 2: Would provide authority for the DOJ to provide criminal histories to the Board of any applicant for licensure as a nursing home administrator.

- The Board must include in its request to the DOJ:
  - The fingerprints of the applicant to be checked.
  - A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
  - Any other information required by DOJ.
- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a State criminal history record check and the State Bureau of Investigation must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
- The Board shall keep all information pursuant to this section confidential.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

Section 3: Would creates a new Article 7D of the Chapter 120 to define the employing entities of the General Assembly and to permit the employing entities to deny prospective employees or dismiss current employees for failing to consent to a criminal record check. The General Assembly does not employ individuals; rather individual entities within the General Assembly employ various employees. The employing entities of the General Assembly are:

- The President Pro Tempore of the Senate.
- The Speaker of the House of Representatives.
- The Principal Clerk of the Senate.
- The Principal Clerk of the House of Representatives.
- The Senate Director of Legislative Assistants.
- The Legislative Services Commission.

Section 4: Would provide authority for the DOJ to provide criminal histories to an employing entity of the General Assembly of any current or prospective employee.

- The employing entity must include in its request to the DOJ:
  - The fingerprints of the applicant to be checked.

- A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
- Any other information required by DOJ.

- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a State criminal history record check and the State Bureau of Investigation must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
- The employing entities shall keep all information pursuant to this section confidential.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

EFFECTIVE DATE: The provisions of the bill relating to Nursing Home Administrators would become effective December 1, 2008, and apply to nursing home administrator applications and renewals submitted on or after that date. The remainder of the bill would become effective when it becomes law.

BACKGROUND: House Bill 2397, as introduced, was recommended by the North Carolina Study Commission on Aging.

Pursuant to Public Law 92-544, State statutes must be enacted in order for the Federal Bureau of Investigation to collect and exchange criminal history record information with State and local agencies for purposes of licensing and employment, and the legislation must be reviewed by the FBI before they will consent to provide national criminal records under the statute.

**Kara McCraw and Drupti Chauhan contributed significantly to this summary.*

H2397e5-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 2397 (Fourth Edition)

SHORT TITLE: Nursing Home Adminis. & Gen. Assembly Crim. Hist.

SPONSOR(S): Representatives Bordsen, Farmer-Butterfield, Boylan, and Pierce

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2008-09	**FY 2009-10**	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**
REVENUES:					
NC State Board of Examiners for Nursing Home Administrators	**$14,250**	**$14,250**	**$14,250**	**$14,250**	**$14,250**
Department of Justice	**$14,250**	**$14,250**	**$14,250**	**$14,250**	**$14,250**
EXPENDITURES:					
NC State Board of Examiners for Nursing Home Administrators	**$14,250**	**$14,250**	**$14,250**	**$14,250**	**$14,250**
Department of Justice	**Depending on the method of fingerprinting used, DOJ expenditures could range from $13,703 to $17,062 for each fiscal year.**				
NC General Assembly	**Minimal fiscal impact anticipated**				
POSITIONS:	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Board of Examiners for Nursing Home Administrators, Department of Justice, North Carolina General Assembly

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

BILL SUMMARY:

HB 2397 amends proposed new G.S. 90-288.01 to include in the definition of criminal history a history of conviction of a federal crime and also changes the term person to applicant throughout. The bill changes the statute number of proposed G.S. 114-19.11 to GS 114-19.24 and amends the proposed

statute by requiring the Board to obtain a criminal history record check of an applicant. The bill states that the Board shall forward an applicant's fingerprints to the State Bureau of Investigation (SBI) for a search of the State's criminal history record file. The SBI has the authority to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The bill also authorizes the employing entities of the General Assembly to conduct criminal records checks for current and potential employees of the General Assembly.

ASSUMPTIONS AND METHODOLOGY:

Department of Justice

Sections 1 and 2 of proposed G.S. 90-288.01 (and G.S. 114-19.24B) require the Board obtain a criminal history record check for every applicant. To initiate the check via the Department of Justice, the Board must forward the covered person's fingerprints and consent form to the SBI and request that person's criminal record. The Board will collect all associated fees and remit those fees to the Department of Justice.

Section 4 of the bill adds a new section to Chapter 114 of the General Statutes providing that the Department of Justice may provide an employing entity of the General Assembly, as defined in new GS 120-36.20, with state and federal criminal history reports for any current or prospective employee. This bill does not require the Department of Justice to perform criminal background checks for all current or prospective employees of General Assembly employing entities. Because it is unknown how many people would be subject to these checks, the fiscal impact of Section 4 cannot be determined.

The Department charges the following fees to non-criminal justice agencies for state and national fingerprint checks, which largely offset the costs of conducting the checks:

N.C. Fingerprint Check:	$14 ($14 retained by DOJ)
N.C. & National Fingerprint Check:	$38 ($16 retained by DOJ, $22 remitted to the FBI)

Presently, the estimated unit costs for conducting national and criminal record checks via fingerprint card and live-scan are $23.50 and $14.54, respectively (costs include overhead and equipment). Each staff member in the fingerprint identification section can perform, on average, 8,000 - 10,000 checks per year. As implied, the costs incurred for criminal record checks are largely offset by fee collections, and existing personnel will absorb the additional workload. DOJ expenditures on Fiscal Impact Table (page 1) are derived from total fingerprint costs from table below multiplied by the number of expected background checks to be performed (375.)

Record Check	Agency Fee	DOJ Total Cost*
Fingerprint Card Check *(NC and FBI data)*	$ 38.00	$ 45.50
Live-Scan Fingerprint Check *(NC and FBI data)*	$ 38.00	$ 36.54

**2005 unit costs are derived from OSBM "Study of the Cost of Providing Criminal Record Checks;" costs include an equipment allowance and 12.5% overhead rate*

Cost for state and federal record checks includes $22 remittance per check to the Federal Bureau of Investigation

N.C. State Board of Examiners for Nursing Home Administrators

The Board will increase the license fee for new applications and renewals to cover Department of Justice expenses associated with conducting the criminal history record check. Any additional workload resulting from requisite record checks (e.g. fingerprinting, record-keeping, etc.) will be accommodated by current Board resources. Table 1 shows the current fee schedule and the increases the Board will make to cover the $38.00 charge from the Department of Justice for conducting the record check. Table 2 shows the number of new applicants and renewals that the Board estimates to occur annually and the fiscal impact the increased fee will have on revenues. The increased fee will result in $14,250 additional revenue annually for the Board, all of these funds will be sent to Department of Justice to cover their costs. The Board estimates that the number of new applicants and renewals will remain constant for at least the next five years.

Table 1. Current and Proposed Fee Schedule

Type of License	Fee Amount	New Fee Amount	Total Increase
New Administrator-in-training	$150	$188	$38
New Reciprocity/Endorsement	$200	$238	$38
Renewal	$425	$463	$38

Table 2. Fiscal Impact Due to Change in Fees

	# of Applicants	Fee Increase	Increased Revenue
New Applicants	35	$38	$1,330
Renewals	340	$38	$12,920
Total	375		$14,250

N.C. General Assembly

The intent of this bill is to grant the General Assembly (NCGA) the authority to conduct criminal record history checks on current or prospective employees. NCGA will reimburse the Department of Justice the costs associated with conducting this check. The check is not a requirement for employment. It is anticipated that costs associated with this bill are minimal and can be absorbed within existing resources.

SOURCES OF DATA: North Carolina State Board of Examiners for Nursing Home Administrators, Department of Justice, North Carolina General Assembly

TECHNICAL CONSIDERATIONS:

1. The words "to the Federal Bureau of Investigation for a national criminal history records check" should be added after the word "fingerprints" on Line 22, Page 4.

2. Section 3(b) does not explicitly grant authority to the North Carolina General Assembly to conduct a criminal history check on current or prospective employees.

3. The terms "criminal history check," "criminal record check," and "criminal history record check" are used interchangeably. The terms should be standardized.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Anna Niles , Amna Cameron, Scott Tesh

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: July 3, 2008

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE JUDICIARY II (CRIMINAL) COMMITTEE
Thursday, July 17, 2008 at 3:00 PM
Senate Chamber

MINUTES

The Senate Judiciary II (Criminal) committee met at 3:00 PM on July 17, 2008, around Senator Hartsell's desk in the Senate Chamber with nine members present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

HB 2397 (Nurs. Home Admin & Gen. Assembly/Crim. Hist.) Senator Hartsell presented a Proposed Committee Substitute and asked for a motion for consideration. Senator Queen so moved, all voted and the motion carried. Senator Hartsell explained the Proposed Committee Substitute. Senator Bingham moved for a favorable report, unfavorable to the Committee Substitute Bill No. 3, but favorable as to the Senate Committee Substitute Bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II (CRIMINAL) COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 17, 2008

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #3) **2397** Nurs. Home Admin & Gen. Assembly/ Crim. Hist.

Draft Number:	51073
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 2397*
Committee Substitute Favorable 6/4/08
Committee Substitute #2 Favorable 6/30/08
Committee Substitute #3 Favorable 7/2/08
Fifth Edition Engrossed 7/7/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H2397-PCS51073-RI-52

Short Title: Nurs. Home Admin Crim. Hist. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

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

"**§ 90-288.01. Criminal history record checks of applicants for licensure.**

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and

Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) Criminal History Record Check. – The Board shall require a criminal history record check of all applicants. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the applicant at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the applicant and the job duties of the position to be filled.

(6) The applicant's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the applicant of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – If the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board must disclose to

the applicant the information contained in the criminal history record check that is relevant to the Board's actions. The Board shall not provide a copy of the criminal history record check to the applicant. An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in an applicant's criminal history record check."

SECTION 2. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.25. Criminal history record checks of applicants for licensure as nursing home administrators.**

(a) The Department of Justice may provide to the North Carolina State Board of Examiners for Nursing Home Administrators from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a nursing home administrator under Article 20 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history 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 applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board 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 history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Sections 1 and 2 of this act are effective December 1, 2008, and apply to nursing home administrator applications and renewals submitted to the Board on or after this date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 5

HOUSE BILL 2397*

Committee Substitute Favorable 6/4/08
Committee Substitute #2 Favorable 6/30/08
Committee Substitute #3 Favorable 7/2/08
Fifth Edition Engrossed 7/7/08

Short Title: Nurs. Home Admin & Gen. Assembly/ Crim. Hist. (Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE AS NURSING HOME ADMINISTRATORS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING AND TO AUTHORIZE EMPLOYING ENTITIES OF THE GENERAL ASSEMBLY TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF PROSPECTIVE AND CURRENT EMPLOYEES.

The General Assembly of North Carolina enacts:

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

"**§ 90-288.01. Criminal history record checks of applicants for licensure.**

(a) The following definitions apply in this section:

(1) Applicant. – A person applying for initial licensure pursuant to either G.S. 90-278 or G.S. 90-287 or applying for renewal of licensure pursuant to G.S. 90-286.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure as a nursing home administrator. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of

Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) Criminal History Record Check. – The Board shall require a criminal history record check of all applicants. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) Convictions. – If the applicant's criminal history record check reveals one or more convictions listed under subdivision (2) of subsection (a) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the applicant at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the applicant and the job duties of the position to be filled.

(6) The applicant's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the applicant of a crime listed in subsection (a) of this section.

(d) Denial of Licensure. – If the Board refuses to issue or renew a license based on information obtained in a criminal history record check, the Board must disclose to the applicant the information contained in the criminal history record check that is relevant to the Board's actions. The Board shall not provide a copy of the criminal history record check to the applicant. An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(e) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for its actions based on information provided in an applicant's criminal history record check."

SECTION 2. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.24. Criminal history record checks of applicants for licensure as nursing home administrators.**

(a) The Department of Justice may provide to the North Carolina State Board of Examiners for Nursing Home Administrators from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a nursing home administrator under Article 20 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal history 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 applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board 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 history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 7D.

"Employing Entities of the General Assembly.

"**§ 120-36.20. Criminal history record check; denial of employment.**

(a) An employing entity of the General Assembly includes any of the following:

(1) The President Pro Tempore of the Senate.

(2) The Speaker of the House of Representatives.

(3) The Principal Clerk of the Senate.

(4) The Principal Clerk of the House of Representatives.

(5) The Senate Director of Legislative Assistants.

(6) The Legislative Services Commission.

(b) An employing entity of the General Assembly may deny employment to or refuse to accept an initial application for employment from any person who refuses to consent to a criminal history check authorized under G.S. 114-19.25. An employing entity of the General Assembly may dismiss a current employee or refuse to extend the employee's period of employment if that employee refuses to consent to a criminal history record check authorized under G.S. 114-19.25."

SECTION 4. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.25. Criminal record checks for employing entities of the General Assembly.**

(a) The Department of Justice may provide to an employing entity of the General Assembly from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee of that employing entity of the General Assembly. The employing entity of the General Assembly shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, a form signed by the current or prospective employee 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 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 employing entity of the General Assembly 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 5. Sections 1 and 2 of this act are effective December 1, 2008 and apply to nursing home administrator applications and renewals submitted to the Board on or after this date. The remainder of this act is effective when it becomes law.

HOUSE BILL 2397:
Nurs. Home Admin & Gen. Assembly/ Crim. Hist

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 16, 2008
Introduced by:	Reps. Bordsen, Farmer-Butterfield, Boylan, Pierce	**Summary by:**	Heather Fennell Committee Counsel
Version:	Fifth Edition		

SUMMARY: ***House Bill 2397 would authorize the State Board of Examiners for Nursing Home Administrators (Board) to obtain criminal record checks for applicants for licensure as nursing home administrators. The House amended the bill to also authorize the employing entities of the General Assembly to conduct criminal record checks for current and potential employees of the General Assembly.***

CURRENT LAW: Article 20 of Chapter 90, the Nursing Home Administrator Act, establishes the State Board of Examiners for Nursing Home Administrators and provides the Board with the authority to issue licenses to qualified persons and to establish qualification criteria for such nursing home administrators. Currently, the Board does not have the authority to require criminal history record checks.

BILL ANALYSIS: House Bill 2397 would do the following:

Section 1: Would provide for criminal history checks of applicants for licensure as nursing home administrators.

Definitions:

- *Applicant:* Any person applying for initial licensure as a nursing home administrator, seeking licensure based on reciprocity with other states, or renewing an existing license.
- *Criminal History:* A history of conviction of a state or federal crime, whether misdemeanor or felony, that bears on the applicant's fitness for licensure as a nursing home administrator. A list of criminal offenses is included in the definition.

Criminal History Record Check: The Board must require a criminal history record check (record check) of all applicants, and refusal to consent to a record check may constitute grounds for denial of licensure.

- The Board must provide to the NC Department of Justice (DOJ) all of the following:
  - The fingerprints of the applicant to be checked,
  - A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
  - Any other information required by DOJ.
- The Board must keep all information obtained pursuant to this section confidential.
- The Board must collect any fees required by DOJ and remit those fees to the DOJ for expenses associated with the record check.

Convictions: A conviction of one or more offenses revealed by the record check shall not automatically bar licensure. The Board must consider the following factors regarding the conviction.

1. Level of seriousness of the crime.
2. Date of the crime.
3. Age of the applicant at the time of the conviction.
4. Circumstances surrounding commission of the crime, if known.
5. Nexus between the criminal conduct and the job duties to be filled.

6. Applicant's prison, jail, parole, rehabilitations, and employment records since date of commission of crime.

7. Subsequent commission by applicant of another crime listed in definition of criminal history.

Denial of Licensure: If the Board refuses to issue or renew a license based on information obtained from a record check:

- The Board must disclose to the applicant the information in the record check relevant to the Board's actions. A copy of the record check shall not be provided to the applicant.
- The applicant has a right to appear before the Board and appeal the decision. Such an appearance constitutes exhaustion of administrative remedies in accordance with Chapter 150B (Administrative Procedure Act).

Limited Immunity: The Board, its officers and employees, are immune from civil liability for actions based on information provided in an applicant's record check, if acting in good faith and in compliance with the section.

Section 2: Would provide authority for the DOJ to provide criminal histories to the Board of any applicant for licensure as a nursing home administrator.

- The Board must include in its request to the DOJ:
  - The fingerprints of the applicant to be checked.
  - A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
  - Any other information required by DOJ.
- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a State criminal history record check and the State Bureau of Investigation must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
- The Board shall keep all information pursuant to this section confidential.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

Section 3: Would creates a new Article 7D of the Chapter 120 to define the employing entities of the General Assembly and to permit the employing entities to deny prospective employees or dismiss current employees for failing to consent to a criminal record check. The General Assembly does not employ individuals; rather individual entities within the General Assembly employ various employees. The employing entities of the General Assembly are:

- The President Pro Tempore of the Senate.
- The Speaker of the House of Representatives.
- The Principal Clerk of the Senate.
- The Principal Clerk of the House of Representatives.
- The Senate Director of Legislative Assistants.
- The Legislative Services Commission.

Section 4: Would provide authority for the DOJ to provide criminal histories to an employing entity of the General Assembly of any current or prospective employee.

- The employing entity must include in its request to the DOJ:
  - The fingerprints of the applicant to be checked.

- A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
- Any other information required by DOJ.

- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a State criminal history record check and the State Bureau of Investigation must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
- The employing entities shall keep all information pursuant to this section confidential.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

EFFECTIVE DATE: The provisions of the bill relating to Nursing Home Administrators would become effective December 1, 2008, and apply to nursing home administrator applications and renewals submitted on or after that date. The remainder of the bill would become effective when it becomes law.

BACKGROUND: House Bill 2397, as introduced, was recommended by the North Carolina Study Commission on Aging.

Pursuant to Public Law 92-544, State statutes must be enacted in order for the Federal Bureau of Investigation to collect and exchange criminal history record information with State and local agencies for purposes of licensing and employment, and the legislation must be reviewed by the FBI before they will consent to provide national criminal records under the statute.

**Kara McCraw and Drupti Chauhan contributed significantly to this summary.*

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GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 2397 (Fourth Edition)

SHORT TITLE: Nursing Home Adminis. & Gen. Assembly Crim. Hist.

SPONSOR(S): Representatives Bordsen, Farmer-Butterfield, Boylan, and Pierce

FISCAL IMPACT

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

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
NC State Board of Examiners for Nursing Home Administrators	**$14,250**	**$14,250**	**$14,250**	**$14,250**	**$14,250**
Department of Justice	**$14,250**	**$14,250**	**$14,250**	**$14,250**	**$14,250**
EXPENDITURES:					
NC State Board of Examiners for Nursing Home Administrators	**$14,250**	**$14,250**	**$14,250**	**$14,250**	**$14,250**
Department of Justice	**Depending on the method of fingerprinting used, DOJ expenditures could range from $13,703 to $17,062 for each fiscal year.**				
NC General Assembly	**Minimal fiscal impact anticipated**				
POSITIONS:	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Board of Examiners for Nursing Home Administrators, Department of Justice, North Carolina General Assembly

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

BILL SUMMARY:

HB 2397 amends proposed new G.S. 90-288.01 to include in the definition of criminal history a history of conviction of a federal crime and also changes the term person to applicant throughout. The bill changes the statute number of proposed G.S. 114-19.11 to GS 114-19.24 and amends the proposed

statute by requiring the Board to obtain a criminal history record check of an applicant. The bill states that the Board shall forward an applicant's fingerprints to the State Bureau of Investigation (SBI) for a search of the State's criminal history record file. The SBI has the authority to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The bill also authorizes the employing entities of the General Assembly to conduct criminal records checks for current and potential employees of the General Assembly.

ASSUMPTIONS AND METHODOLOGY:

Department of Justice

Sections 1 and 2 of proposed G.S. 90-288.01 (and G.S. 114-19.24B) require the Board obtain a criminal history record check for every applicant. To initiate the check via the Department of Justice, the Board must forward the covered person's fingerprints and consent form to the SBI and request that person's criminal record. The Board will collect all associated fees and remit those fees to the Department of Justice.

Section 4 of the bill adds a new section to Chapter 114 of the General Statutes providing that the Department of Justice may provide an employing entity of the General Assembly, as defined in new GS 120-36.20, with state and federal criminal history reports for any current or prospective employee. This bill does not require the Department of Justice to perform criminal background checks for all current or prospective employees of General Assembly employing entities. Because it is unknown how many people would be subject to these checks, the fiscal impact of Section 4 cannot be determined.

The Department charges the following fees to non-criminal justice agencies for state and national fingerprint checks, which largely offset the costs of conducting the checks:

N.C. Fingerprint Check:	$14 ($14 retained by DOJ)
N.C. & National Fingerprint Check:	$38 ($16 retained by DOJ, $22 remitted to the FBI)

Presently, the estimated unit costs for conducting national and criminal record checks via fingerprint card and live-scan are $23.50 and $14.54, respectively (costs include overhead and equipment). Each staff member in the fingerprint identification section can perform, on average, 8,000 - 10,000 checks per year. As implied, the costs incurred for criminal record checks are largely offset by fee collections, and existing personnel will absorb the additional workload. DOJ expenditures on Fiscal Impact Table (page 1) are derived from total fingerprint costs from table below multiplied by the number of expected background checks to be performed (375.)

Record Check	Agency Fee	DOJ Total Cost*
Fingerprint Card Check *(NC and FBI data)*	$ 38.00	$ 45.50
Live-Scan Fingerprint Check *(NC and FBI data)*	$ 38.00	$ 36.54

**2005 unit costs are derived from OSBM "Study of the Cost of Providing Criminal Record Checks;" costs include an equipment allowance and 12.5% overhead rate*

Cost for state and federal record checks includes $22 remittance per check to the Federal Bureau of Investigation

N.C. State Board of Examiners for Nursing Home Administrators

The Board will increase the license fee for new applications and renewals to cover Department of Justice expenses associated with conducting the criminal history record check. Any additional workload resulting from requisite record checks (e.g. fingerprinting, record-keeping, etc.) will be accommodated by current Board resources. Table 1 shows the current fee schedule and the increases the Board will make to cover the $38.00 charge from the Department of Justice for conducting the record check. Table 2 shows the number of new applicants and renewals that the Board estimates to occur annually and the fiscal impact the increased fee will have on revenues. The increased fee will result in $14,250 additional revenue annually for the Board, all of these funds will be sent to Department of Justice to cover their costs. The Board estimates that the number of new applicants and renewals will remain constant for at least the next five years.

Table 1. Current and Proposed Fee Schedule

Type of License	Fee Amount	New Fee Amount	Total Increase
New Administrator-in-training	$150	$188	$38
New Reciprocity/Endorsement	$200	$238	$38
Renewal	$425	$463	$38

Table 2. Fiscal Impact Due to Change in Fees

	# of Applicants	Fee Increase	Increased Revenue
New Applicants	35	$38	$1,330
Renewals	340	$38	$12,920
Total	375		$14,250

N.C. General Assembly

The intent of this bill is to grant the General Assembly (NCGA) the authority to conduct criminal record history checks on current or prospective employees. NCGA will reimburse the Department of Justice the costs associated with conducting this check. The check is not a requirement for employment. It is anticipated that costs associated with this bill are minimal and can be absorbed within existing resources.

SOURCES OF DATA: North Carolina State Board of Examiners for Nursing Home Administrators, Department of Justice, North Carolina General Assembly

TECHNICAL CONSIDERATIONS:

1. The words "to the Federal Bureau of Investigation for a national criminal history records check" should be added after the word "fingerprints" on Line 22, Page 4.

2. Section 3(b) does not explicitly grant authority to the North Carolina General Assembly to conduct a criminal history check on current or prospective employees.

3. The terms "criminal history check," "criminal record check," and "criminal history record check" are used interchangeably. The terms should be standardized.

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DATE: July 3, 2008

Signed Copy Located in the NCGA Principal Clerk's Offices